

## CALIFORNIA COASTAL COMMISSION

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# Th9

**Staff:** S. Ryan-SF  
**Staff Report:** November 22, 2006  
**Hearing Date:** December 14, 2006

**STAFF REPORT AND FINDINGS FOR ISSUANCE OF CEASE AND DESIST ORDER**

<b>CEASE AND DESIST ORDER:</b>	CCC-06-CD-08
<b>RELATED VIOLATION FILE:</b>	V-1-03-009
<b>PROPERTY LOCATION:</b>	Lot 10 in Block 7, Pacific Shores Subdivision, north of Crescent City, Del Norte County, APN 107-071-17 ( <b>Exhibit 1</b> ).
<b>DESCRIPTION OF PROPERTY:</b>	Coastal property in Pacific Shores, near Lakes Earl and Tolowa in Del Norte County.
<b>PROPERTY OWNER:</b>	Janice Wilson
<b>VIOLATION DESCRIPTION:</b>	Unpermitted development including (but not limited to): installation of a culvert, placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, (long term) placement of recreational vehicles, sheds and a portable toilet, and construction of a fence.
<b>SUBSTANTIVE FILE DOCUMENTS:</b>	1. Cease and Desist Order File No. CCC-06-CD-08 2. Exhibits 1 through 17
<b>CEQA STATUS:</b>	Exempt (CEQA Guidelines (CG) §§ 15061(b)(3)), and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321).

## **I. SUMMARY OF STAFF RECOMMENDATION AND FINDINGS**

Staff recommends that the Commission issue Cease and Desist Order No. CCC-06-CD-08 (“Order”) to require removal of unpermitted development at Pacific Shores Subdivision Block 7, Lot 10, APN 107-071-17 in Del Norte County (“subject property”). The unpermitted development includes (but may not be limited to): installation of a culvert, placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, (long term) placement of recreational vehicles, sheds and a portable toilet, and construction of a fence (**Exhibit 2**). Janice Wilson (“Respondent”) owns the subject property.

The subject property is located in the Pacific Shores subdivision in unincorporated Del Norte County, north of Crescent City. Pacific Shores is a 1,535-lot subdivision created in 1963. The subdivision has no developed community service or public utility infrastructure, minimal road improvements, and is situated tens of miles from police, fire, and ambulance emergency service responders. Estuarine areas and seasonal wetlands, which constitute significant environmentally sensitive habitat areas, are in close proximity to the subject property. The subject property and connecting roadways serving the subject property are subject to seasonal inundation by the waters of the nearby coastal lagoon system known as Lakes Earl and Tolowa. This large estuarine lagoon is specifically called out for heightened protection from fill and other adverse environmental impacts in Section 30233(c) of the Coastal Act. The coastal lagoon complex supports numerous habitat types including emergent wetlands, open water, mudflats, flooded pastures, woodland, sandy beach, and riverine habitat. The subject property is located approximately 3,000 feet from the shoreline of Lakes Earl and Tolowa, has essentially flat relief, and is located at an elevation of approximately 10 feet above sea level. The subject property and its connecting roadways are subject to seasonal inundation by the waters of Lakes Earl and Tolowa.

Regarding coastal planning and development, the entire subdivision is an Area of Deferred Certification (“ADC”) and was not included in the Commission’s October 1983 certification of the Del Norte County Local Coastal Program. The Commission therefore possesses jurisdiction for issuing Coastal Development Permits, as well as for enforcing the provisions of the Coastal Act in this area.

Unpermitted activity that has occurred on the subject property includes the placement of solid materials and structures (such as recreational vehicles, portable toilets, fencing, and a culvert) on land, and therefore meets the definition of “development” set forth in Section 30106 of the Coastal Act (Public Resources Code). The development was undertaken without a Coastal Development Permit (“CDP”), in violation of Public Resources Code section 30600. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act. The unpermitted development is also inconsistent with Sections 30230, 30231, 30233, 30240 and 30250(a) of the Coastal Act, and is causing continuing resource damage. The proposed Order would direct the Respondent to: 1) cease and desist from conducting or maintaining unpermitted development on the property; 2) remove all unpermitted development from the property, in accordance with the terms of the Order; and 3) allow vegetation to grow back and return

impacted areas of the property to their pre-violation condition. The Motion to issue the proposed Cease and Desist Order is found on page 3.

## **II. HEARING PROCEDURES**

### **A. Cease and Desist Order**

The procedures for a hearing on a proposed Cease and Desist Order are set forth in Section 13185 of the California Code of Regulations, Title 14 (14 CCR), Division 5.5, Chapter 5, Subchapter 8.

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other person. Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representatives may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Sections 13185 and 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motion listed below, per staff recommendation or as amended by the Commission, will result in issuance of the Order.

## **III. STAFF RECOMMENDATION**

### **A. Cease and Desist Order**

#### **1. Motion**

*I move that the Commission issue Cease and Desist Order No. CCC-06-CD-08 pursuant to the staff recommendation.*

**2. Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Cease and Desist Order CCC-06-CD-08. The motion passes only by an affirmative vote of the majority of Commissioners present.

**3. Resolution to Issue Cease and Desist Order**

The Commission hereby issues Cease and Desist Order No. CCC-06-CD-08, as set forth below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit, in violation of the Coastal Act, and the requirements of the Order are necessary to ensure compliance with the Coastal Act.

**IV. FINDINGS FOR CEASE AND DESIST ORDER CCC-06-CD-08**

**A. History of Violation and Communications Between Respondent and Staff**

The subject property is located in the Pacific Shores subdivision in unincorporated Del Norte County, north of Crescent City. Pacific Shores is a 1535-lot subdivision created in 1963. The subdivision has no developed community service and public utility infrastructure, minimal road improvements, and is situated tens of miles from police, fire, and ambulance emergency service responders. Estuarine areas and seasonal wetlands, which constitute significant environmentally sensitive habitat areas, are in close proximity to the subject property. The subject property and connecting roadways serving the subject property are subject to seasonal inundation by the waters of the nearby coastal lagoon complex known as Lakes Earl and Tolowa. This large estuarine complex is specifically called out for heightened protection from fill and other adverse environmental impacts in Section 30233(c) of the Coastal Act. The lagoon complex supports numerous habitat types including emergent wetlands, open water, mudflats, flooded pastures, woodland, sandy beach, and riverine habitat, and is host to a number of threatened species (see discussion in Section D.1.iv of this report. The subject property is located approximately 3,000 feet from the shoreline of Lakes Earl and Tolowa, has essentially flat relief, and is located at an elevation of approximately 10 feet above sea level. The subject property and its connecting roadways are subject to seasonal inundation by the waters of Lakes Earl and Tolowa.

Regarding coastal planning and development, the entire subdivision is an Area of Deferred Certification (“ADC”) and was not included in the Commission’s October 1983 certification of the Del Norte County Local Coastal Program. The Commission therefore possesses jurisdiction for issuing Coastal Development Permits, as well as for enforcing the provisions of the Coastal Act in this area.

In a letter dated July 18, 2003, the Coastal Commission sent Respondent a notice of violation regarding the unpermitted development on the subject property (**Exhibit 3**). In a letter dated July 30, 2003, Respondent indicated that they intended to consult with legal counsel and a property owner’s association before responding further (**Exhibit 4**). In letters dated December 18, 2003 and July 9, 2004, the Coastal Commission sent Respondent two additional notices of violation

regarding the unpermitted development on the subject property (**Exhibits 5 and 6**). In a letter dated July 16, 2004, Respondent asserted that the Coastal Commission was unconstitutional with no power over Respondent or Respondent's property but did not respond otherwise to the notices of violation (**Exhibit 7**). In a letter dated July 21, 2004, the Commission's legal staff responded and explained that the litigation challenging the constitutionality of the method of appointing Commission members was pending, but that no action had been taken, judicial or otherwise, that prevented the Coastal Commission from enforcing the permit requirements of the Coastal Act (**Exhibit 8**). (On June 23, 2005, the California Supreme Court held that the current provisions of the Coastal Act regarding the appointment of Commissioners and the terms of office of Commissioners are constitutional.)

On August 20, 2004, Commission staff called Respondent to try and resolve the matter. In this conversation, Respondent requested that all contact with Respondent regarding the violation be in writing. Therefore, in a letter dated August 23, 2004, the Coastal Commission sent Respondent a fourth notice of violation letter regarding the unpermitted development on the subject property, which remains unresolved (**Exhibit 9**). In a letter dated September 2, 2004, Respondent wrote back and referred to the August 20, 2004 telephone conversation with enforcement staff and indicated that she was seeking legal assistance, but did not indicate an intention to resolve the violations voluntarily.

In a letter dated June 21, 2006, the Executive Director of the Commission sent a Notice of Intent (NOI) to record a Notice of Violation Action ("NOVA") and to commence Cease and Desist Order and Restoration Order Proceedings to Respondent (**Exhibit 10**). The NOI described the real property, identified the nature of the violations, named the owner of the property and informed her that if she objected to the recordation of a NOVA, she would be given an opportunity to present evidence on the issue on whether a violation has occurred. The NOI also stated the basis for issuance of the proposed Cease and Desist and Restoration orders, stated that the matter was tentatively being placed on the Commission's August 2006 hearing agenda, and provided Respondent with the opportunity to respond to allegations in the NOI with a Statement of Defense form. The NOI requested that Respondent submit her response or objection to Commission staff in writing by July 11, 2006, pursuant to the deadlines set forth in the Commission's regulations.

As of the July 11, 2006 deadline, Commission staff had not received any contact from Respondent. The certified mail copy of the June 21, 2006 NOI that was mailed to Respondent was returned by the U. S. Post Office as unclaimed. The regular mail copy of the June 21, 2006 NOI that was mailed to Respondent has not been returned to staff, so given the standard practices of the local post office, which have been confirmed by staff, this copy of the NOI was presumably received at the Respondent's P.O. Box. Respondent submitted no written objection regarding the recordation of a NOVA by the July 11 2006 deadline. The NOVA was therefore recorded at the De Norte County recorder's office on July 14, 2006, in accordance with the Commission's regulations.

In order to ensure all proper notice was given regarding the proposed enforcement Order, on September 8, 2006, Del Norte County code enforcement staff visited the subject property and

posted an updated NOI dated September 7, 2006 to the outside of a fence at the edge of the subject property. County staff reported that during this site visit, the Respondent exited a trailer, approached County staff, asked what had just been attached to her fence, and was observed walking back to a trailer with the NOI letter in her hand (**Exhibit 11**). The updated September 7, 2006 NOI established a new deadline of September 29, 2006, for written submittal to Commission staff of Respondent's response or objection, pursuant to the deadlines set forth in the Commission's regulations. Respondent's receipt of the September 7 2006 NOI was also confirmed because Commission staff subsequently received a signed receipt card for the certified mail copy of the September 7 2006 NOI.

On September 25, 2006, enforcement staff received a letter dated September 21, 2006 from Respondent (**Exhibit 12**). The letter submitted by the Respondent did not utilize the Statement of Defense form and is not written in a manner that specifies which allegations in the NOI the Respondent admits, denies, or has no personal knowledge of. The Respondent's defenses are summarized and responded to, insofar as Commission staff could interpret the statements contained in Respondent's letter, and discussed in more detail in Section G, below.

The Respondent's September 21, 2006 letter asserted that she could not afford to travel 1,000 miles to the scheduled hearing in San Diego but did not formally request a postponement of the November hearing to another date or to a location closer to Del Norte County. In a letter dated September 29, 2006, Commission staff explained that the large volume of enforcement cases prevented staff from being able to schedule all hearings in the location that is most convenient to the alleged violator (**Exhibit 13**). Staff offered a possible postponement of the scheduled hearing to the December hearing, which would be held in San Francisco. Staff set a deadline of October 13, 2006, for Respondent to contact staff to request such a postponement. As of the October 13 deadline, staff had received no further communication from Respondent and so the proposed Order was scheduled for the November hearing.

On November 1, 2006, staff received a letter from an attorney who had just been retained by Respondent to represent her (**Exhibit 14**). The letter requested a postponement of the November hearing. As a courtesy, in a letter dated November 2, 2006, staff postponed this matter to the December 2006 hearing (**Exhibit 15**). Although not required by Commission regulations, staff stated its willingness to accept defense materials from Respondent's attorney no later than November 13, 2006. In a letter dated November 13, 2006, staff received the late submittal of defense materials from Respondent's attorney (**Exhibit 16**). The Respondent's defenses are responded to and discussed in more detail in Section G, below.

## **B. Description of Unpermitted Development**

The unpermitted development consists of removal of major vegetation and change in intensity of use from a vacant lot to residential uses, and the construction and placement of solid materials and structures on the subject property, and maintenance of that and other development, including (but not limited to): installation of a culvert, placement of fill (in or adjacent to wetlands), (long term) placement of recreational vehicles, sheds and a portable toilet, and construction of a fence.

Unpermitted activity that has occurred on the subject property includes the placement of solid materials and structures (such as recreational vehicles, portable toilets, fencing, and a culvert) on land, and therefore meets the definition of “development” set forth in Section 30106 of the Coastal Act (Public Resources Code). The development was undertaken without a Coastal Development Permit (“CDP”), in violation of Public Resources Code section 30600.

**C. Basis for Issuance of Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, which states, in relevant part:

*(a) If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person ... to cease and desist...*

*(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

The cited activities at issue in this matter clearly constitute development as defined in Coastal Act Section 30106 and, as such, are subject to the permit requirements provided in Coastal Act Section 30600(a).

No CDP was obtained for the development on the property, as required under Coastal Act Section 30600(a). Consequently, the Commission is authorized to issue CCC-06-CD-08 pursuant to Section 30810(a)(1). The proposed Cease and Desist Order will direct the Respondent to ensure compliance with the Coastal Act by removing the unpermitted development, allowing vegetation to grow back and returning impacted areas of the property to their pre-violation condition.

**D. Inconsistency with Chapter 3 of the Coastal Act and Del Norte County Health and Building Codes**

As discussed above, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act for the unpermitted development on the subject property. A showing of inconsistency with Chapter 3 of the Coastal Act is not required for Cease and Desist Orders to be issued under Section 30810, but the information is provided for background purposes. Additionally, relevant sections of the Del Norte County Codes are provided to underscore the inconsistencies of this development with local regulations and policies as well as with the Coastal Act.

## **1. Inconsistency with Chapter 3 of the Coastal Act**

The unpermitted development is inconsistent with Sections 30230, 30231, 30233, 30240 and 30250(a) of the Coastal Act. The discussion regarding the inconsistency of the unpermitted development with Sections 30230, 30231, 30233, and 30240 of the Coastal Act is grouped together after the text excerpts of these four sections because the impact discussion for all four sections is related. The inconsistency of the unpermitted development with Section 30250(a) is discussed separately at the end of this section of the report.

### **i. Section 30230 – Marine resources; maintenance**

Coastal Act Section 30230 states the following:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

### **ii. Section 30231 – Biological productivity; water quality**

Coastal Act Section 30231 states the following:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

### **iii. Section 30233 – Diking, filling or dredging; continued movement of sediment and nutrients**

Coastal Act Section 30233(c) states the following:

*In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled*



*“Acquisition Priorities for the Coastal Wetlands of California”, shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.*

**iv. Section 30240 – Environmentally sensitive habitat areas; adjacent development**

Coastal Act Section 30240 states the following:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Analysis of Chapter 3 Impacts

Lakes Earl and Tolowa are an estuarine lagoon complex that comprise the core of the approximately 5,624-acre Lake Earl Wildlife Area (“LEWA”), which is managed by the California Department of Fish and Game (“CDFG”). The U.S. Fish and Wildlife Service (“USFWS”) has characterized Lake Earl and Lake Tolowa as “one of the most unique and valuable wetland complexes in California.” This wetland complex is specifically called out for heightened protection from fill and other types of alteration in Section 30233(c) of the Coastal Act. The lagoon system supports numerous habitat types including emergent wetlands, open water, mudflats, flooded pastures, woodland, sandy beach, and riverine habitat. The Pacific Shores area is also habitat for at least fifteen federally and state listed species, including bald eagle, peregrine falcon, brown pelican, western snowy plover, marbled murrelet, sand dune phacelia, Oregon silverspot butterfly, seaside hoary elfin and greenish blue butterflies, tidewater goby, green sturgeon, coho salmon, steelhead and coastal cutthroat trout. The subject property has essentially flat relief and is located at an elevation of approximately 10 feet above sea level. The subject property and its connecting roadways are subject to seasonal inundation by the waters of Lakes Earl and Tolowa.

The unpermitted development on the subject property constitutes a significant disruption and negative impact to marine resources and environmentally sensitive wetland habitat (**Sections 30230, 30233 and 30240** of the Coastal Act), because of adverse effects of the unpermitted fill and major vegetation removal, and because of the presence of potential sources of contamination brought onto the site. Any fill or alteration of wetland hydrology (including diversion or draining of water from or into wetland areas) reduces its ability to function. Water is the main requirement for a functional wetland. If water is removed, or isn’t present in the wetland for as long (for example, because of adjacent filled areas that prevent water from infiltrating into the

ground), then wetland function will be degraded. Therefore, wetland function and general marine resources would be degraded by actions that 1) disrupt water supply through direct fill of a wetland, other sorts of covering of a wetland, diversion of water, or draining, 2) degrade water quality through chemical contamination or temperature modification, or 3) result in removal of wetland vegetation through grading, grazing, mowing, or placement of fill that covers and then eliminates the underlying vegetation. Degradation of function means that the same plants will not grow, the wetland will not provide the same water filtration, percolation, and stormwater runoff storage, and wildlife use of that feature could be reduced. In addition, the residential use being made of this site is not one of the limited, enumerated uses pursuant to Section 30233(c).

The unpermitted development is likely also affecting the biological productivity and water quality of the surrounding area (which is to be protected under **Section 30231** of the Coastal Act). The subject property has no septic system and no municipal water supply. Although an unpermitted portable toilet is present on the subject property, Commission staff has no information about whether it is being adequately maintained. The potential for wastewater and septic waste streams percolating into the surrounding area and contaminating the groundwater is high given the absence of waste disposal infrastructure. The subject property has a low elevation relative to the lagoon's surface level presenting the risk that untreated sewage from Respondent's property could contaminate the public waters. Furthermore, the Pacific Shores subdivision is characterized by shallow or perched groundwater conditions and underlying sandy soils that are highly permeable. The subject property's natural characteristics and geography, combined with Respondent's unpermitted development, present a high risk of release of untreated sewage into adjoining areas that would pose human health risks to persons who might come in contact with the waste. This unpermitted development also threatens to adversely affect the water quality and nearby environmentally sensitive habitat area.

Therefore, the unpermitted development is inconsistent with **Sections 30230, 30231, 30233 and 30240** of the Coastal Act.

**v. Section 30250(a) – Location; existing developed area**

Coastal Act Section 30250(a) states the following:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

### Analysis of Chapter 3 Impacts

No municipal water supply or wastewater treatment facilities are available to serve the subject property. Although the subject property is located within an established community services district, the Pacific Shores California Subdivision Water District has not developed water infrastructure or sewage disposal infrastructure to serve the subdivision.

The unpermitted development on the subject property has not been placed within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In fact, no such services are available and the unpermitted development is having significant adverse effects on coastal resources as described above. Therefore, the unpermitted development is inconsistent with **Section 30250(a)** of the Coastal Act.

## **2. Inconsistency with Del Norte County Code: Title 7 Health and Welfare and Title 14 Buildings and Construction**

The unpermitted development on the subject property is also inconsistent with the following Del Norte County Health and Building Codes regulating recreational vehicles and on-site sewage disposal:

### **i. County Health and Welfare Code; Recreational Vehicles and Tents**

#### **Section 7.09.110 – Purpose**

Del Norte Health and Welfare Code Section 7.09.110 states the following:

*The purpose of this chapter is to enhance the appearance of the county by limiting the proliferation of recreational vehicles and tents being used for temporary lodging on a protracted basis which constitute a visual blight and reduces the quality of life within the county to the extent that the overall public health is detrimentally affected. (Ord. 97-12 § 2 (part), 1997.)*

#### **Section 7.09.120 – Definitions**

Del Norte Health and Welfare Code Section 7.09.120 states the following:

*As used in this chapter*

...

*"Development permit" means and includes, but shall not be limited to, a valid building permit or other valid permit acquired for the development of property for residential purposes, and any other valid permit obtained*

*for the development of property as defined in Section 21.04.195, both within and outside of the coastal zone.*

...

*"Enforcement official" means any officer or department head of the county or other public agency charged with the duty of enforcing county ordinances or laws of the state.*

...

*"Recreational vehicle" means and includes, but shall not be limited to, a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy, and which is either self-propelled, truck-mounted, or designed to be towable on the highways. For purposes of this chapter, "recreational vehicle" shall also include tents which may or may not be designed to be towable on the highways. (Ord. 97-12 § 2 (part), 1997.)*

#### **Section 7.09.210 – Prohibited Activity**

Del Norte Health and Welfare Code Section 7.09.210(a) states the following:

*It is unlawful for any person to occupy or use any recreational vehicle, or attempt to occupy or use any recreational vehicle for purposes of sleeping or lodging on private or public property, unless otherwise excepted in this chapter, in the unincorporated area of Del Norte County for any period of time in excess of fourteen consecutive days during any thirty day period without first obtaining a permit for such use from the community development department.*

#### **Section 7.09.240(a) – Permits**

Del Norte Health and Welfare Code Section 7.09.240(a) states the following:

*The community development department is authorized to issue permits for the use of recreational vehicles for a period of longer than fourteen days under the following circumstances:*

- 1. The registered owner or other person in legal possession of the recreational vehicle has a development permit relating to the property upon which the recreational vehicle is parked; and*
- 2. Adequate and safe provisions have been made for water and sewage; and*
- 3. If electricity is supplied to the recreational vehicle, the connections have been approved for purposes of safety by the county's building inspector. (Ord. 97-12 § 2 (part), 1997.)*

Analysis of applicable County Code provisions:

There are at least four recreational vehicles, as defined by Del Norte County Health and Welfare Code Section 7.09.120, located on the subject property. These recreational vehicles and other development were first observed on the subject property on February 21, 2003 by Commission staff during a site inspection. The County community development department has issued no permit for this use. Furthermore, none of the circumstances listed in section 7.09.240 of the County Health and Welfare Code that authorize the County community development department to issue recreational use permits apply to the subject property. Photos of the subject property taken in February 2003, December 2004 and October 2006 by Commission staff indicate that the recreational vehicles have remained on the property for more than two years and are evidently being used for permanent lodging purposes in contravention of the Del Norte County Health and Welfare Code policies and ordinances.

**ii. County Buildings and Construction Code; On-Site Sewage Disposal Systems**

**Section 14.12.050 – Permit or approval required**

Del Norte Buildings and Construction Code Section 14.12.050 states the following:

- A. No alternative on-site sewage disposal system shall be constructed, enlarged, altered, repaired, relocated, removed, or demolished unless a permit has first been obtained from the health officer.*
- B. No standard on-site sewage disposal system shall be constructed, enlarged, altered, repaired, relocated, removed, or demolished unless a permit has first been obtained from the building department.( Ord. 2005-25B § 4, 2005; Ord. 88-34 § 2 (part), 1988.).*

**Section 14.12.060 – General standards, prohibitions, requirements**

Del Norte Buildings and Construction Code Section 14.12.060(a-b) states the following:

- A. Approved Disposal Required. All sewage shall be treated and disposed of in an approved manner.*
- B. Discharge of Sewage Prohibited. Discharge of untreated or partially treated sewage or septic tank effluent directly or indirectly onto the ground surface or into public waters constitutes a public health hazard and is prohibited.*

Analysis of applicable County Code provisions:

As discussed above, the Pacific Shores California Subdivision Water District has not developed a sewage disposal infrastructure. Additionally, Respondent has not obtained or applied for any of the above-mentioned permits or approvals required by Del Norte County for treatment and disposal of sewage generated on the subject property. Although an unpermitted portable toilet is present on the subject property, Commission staff has no information about whether it is being adequately maintained. The potential for wastewater and septic waste streams percolating into the surrounding area and contaminating the groundwater is high given the absence of waste disposal infrastructure.

**E. California Environmental Quality Act (CEQA)**

The Commission finds that the issuance of Commission Cease and Desist Order CCC-06-CD-07, to compel removal of the unpermitted development, is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order is exempt from the requirement of preparation of an Environmental Impact Report, based on Sections 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

**F. Findings of Fact**

1. Janice Wilson owns the subject property, identified as Lot 10 in Block 7, APN 107-071-17, in the Pacific Shores Subdivision, north of Crescent City, Del Norte County.
2. Unpermitted development including installation of a culvert, placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, (long term) placement of recreational vehicles, sheds and a portable toilet, and construction of a fence, has occurred on the subject property.
3. No coastal development permit was applied for or obtained for this development.
4. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.
5. The unpermitted development is inconsistent with the Chapter 3 resource protection policies of the Coastal Act, including Sections 30230, 30231, 30233, 30240, and 30250(a).
6. The unpermitted development is causing continuing resource damages.
7. The unpermitted development is inconsistent with the Del Norte County Health and Welfare and Buildings and Construction Codes, including Sections 7.09.210, 7.09.240, 14.12.050, and 14.12.060.
8. The unpermitted development on the site constitutes a violation of the Coastal Act.

**G. Violator's Defenses and Commission's Response**

On September 25, 2006, the Commission's enforcement staff received a letter dated September 21, 2006 from Respondent. The letter submitted by the Respondent did not utilize the Statement of Defense form and is not written in a manner that specifies which allegations in the NOI the Respondent admits, denies, or has no personal knowledge of. Respondent's statements are summarized in Defenses 1 and 2, below, insofar as Commission staff could interpret the statements contained in the Respondent's letter as defenses, and the Commission's response follows each defense.

On November 13, 2006, the Commission's enforcement staff received a late submittal of defense statements from Respondent's attorney (**Exhibit 16**). Defenses submitted by Respondent's attorney are summarized in Defenses 3 through 11, below, and the Commission's response follows each defense.

**1. Respondent's Defense:**

"No I could not respond to...enforcement letter...and certainly with no legal assistance. No I cannot go financially or otherwise 1,000 miles away to San Diego for the 11-06 hearing [sic]."

**Commission's Response to Defense #1:**

The Respondent asserts that she cannot afford to travel to the Commission hearing in San Diego but did not formally request a postponement of this hearing to another date or to a location closer to where she lives in Del Norte County. In a letter dated September 29, 2006, Commission staff explained that the large volume of enforcement cases and the fact that the Commission meets in a single pre-established location each month prevented staff from being able to schedule all hearings in the location that is most convenient to the alleged violator (**Exhibit 13**). Because of the resource damage resulting from the unpermitted development at issue in this case, Commission staff believed that the Commission would want an opportunity to act as soon as possible, and certainly sooner than the next hearing that will be within 100 miles of the subject site, which is likely to be 10 months away.

However, Staff did offer a possible postponement of the scheduled hearing to the December hearing, which would be held in San Francisco rather than in Southern California, and which is much closer to Respondent's residence. Staff set a deadline of October 13, 2006, for Respondent to contact staff to request such a postponement. As of the October 13 deadline, staff had received no further communication from Respondent and so the proposed Order was scheduled for the November hearing. As discussed elsewhere in this report, Respondent retained an attorney on November 1, 2006 and as a courtesy, the proposed Order was postponed on November 2, 2006 until the December 2006 hearing.

**2. Respondent's Defense:**

"It is a fact I am a citizen of the United States of America not through illegalities [sic] and you will...courteously allow me to be protected under the Constitution of the United States of America. For which I stand proud to be humbly so [sic]."

**Commission's Response to Defense #2:**

U.S. citizenship is not a defense against compliance with the Coastal Act or any other law. The Respondent owns the subject property, which is located in the Coastal Zone. As the owner of record, Respondent is required to comply with all applicable local, state, and federal laws, including Coastal Act permitting and resource protection requirements.

Respondent's statement invokes the protections of the United States Constitution, but it does not indicate what provision of the Constitution she believes to be relevant here. The prior defense arguably asserts procedural due process claims, but for the reasons indicated above, due process is not being denied to Respondent.

**3. Respondent's Defense:**

"The Coastal Act provides that before its February of 1976 effective date, existing land use and structures were grandfathered. PRC §30608. *Monterey Sand Co. v. California Coastal Com.* (1987) 191 Cal.App.3d 169. As noted in the staff report, the Pacific Shores subdivision was approved in 1963, more than 10 years before the effective date of the Act.

County of Del Norte ordinances pertaining to coastal zoning and restrictions were not passed until 1984. As indicated in the staff report, the Del Norte County ordinances pertaining to recreational vehicles were all adopted after 1988. Nonconforming uses cannot be barred retroactively. *Jones v. Los Angeles* (1930) 211 C. 304. Thus the county ordinances would not apply to previous uses such as the recreational vehicles that had been located on Pacific Shores property on a permanent basis." Statement of Defense at 5.

"Del Norte County, the entity empowered with the findings of any "inconsistencies" with its codes, has never cited Ms. Wilson for any violations. This is most likely due to the fact that the ordinances cited were all adopted after people began living in recreational vehicles on the property and would thus be retroactive, and unconstitutional, application of such ordinances." Id. at 9.

"She [Ms. Wilson] has lived on the property since buying it from the previous owner, who also lived on the property, as have owners since the creation of Pacific Shores in 1963. Ms. Wilson is mentally disabled with limited income." Id. at 6.

"No permit [for development] was required. The property was zoned residential before the enactment of the Coastal Act and culverts were in place before enactment. Recreational vehicles, fencing and a portable toilet have always been on the property, since before the enactment of the



Coastal Act; the Commission has offered no substantial evidence to the contrary. There is no “shed” on the property. The Commission has provided no substantial evidence of actual “major vegetation” which has been removed. The Commission has provided no substantial evidence of a change of intensity of use since the enactment of the Coastal Act. The property was subdivided long before the Act and improvements had already been installed. The Commission’s failure to state any actual dates for the alleged “unpermitted development” is glaring.” Id. at 6.

“No permit was required as people have been living on the property since it was subdivided and before the enactment of the Coastal Act. The Commission has provided no substantial evidence to the contrary.” Id. at 6-7.

“Exemption [from the permit requirements of the Coastal Act] applies because the property has been in the existing use and residents have been living there in recreational vehicles since prior to the enactment of the Coastal Act.” Id. at 7.

“The cease-and-desist order is most notable unsupported by substantial evidence as it applies to PRC §30250(a). The statute applies to “new” development. This is not new development. It has been there since 1963.” Id. at 8.

“Ms. Wilson submits that she is exempt from permitting under the Coastal Act and has the procedural right to assert such exemption prior to the proposed enforcement.” Id. at 11.

### **Commission’s Response to Defense #3:**

The statements in this defense primarily assert a claim of vested rights for the unpermitted development on the subject property. Respondent claims that all development on the property has been present since before Coastal Act permit requirements came into effect and is therefore exempt from permit requirements, but no evidence in support of this claim is provided. Moreover, any person claiming a vested right as a basis for an exemption from the Coastal Act’s permit requirements must substantiate that claim via a formal application and the presentation of evidence, reviewed by the Commission in a formal public hearing, in which the Respondent has the burden of proof. 14 C.C.R. § 13200. The Respondent has not submitted any such vested rights application and has not submitted any evidence supporting a claim of vested rights.

Furthermore, the evidence available to the Commission actually affirmatively supports the opposite proposition. That is, photographic evidence suggests that none of the cited development was present on the subject property prior to the enactment of the Coastal Act, and that there is no vested right for any of the existing unpermitted development. Examination of parcel maps and publicly available aerial photos of the subject property (**Exhibit 17**) indicates that no development is visible on or near the subject property in 1972, 1979, or 1987 (Images 7201057, 7901105, and 8719146 on the California Coastal Records Project website located at [www.californiacoastline.org](http://www.californiacoastline.org)), while development is clearly visible on the subject property in a 2002 aerial photo (Image 7154 on the California Coastal Records Project website).

Other claims infused throughout the above quote, either explicitly or implicitly, include: (1) nonconforming uses cannot be barred retroactively; (2) there cannot have been any violation of County ordinances because there has been no citation from the County; (3) Respondent is due some special dispensation for being “mentally disabled with limited income;” (4) there is no shed on the property; and (5) there is no substantial evidence of major vegetation or change in intensity of use. Respondent’s attorney also concludes the above quotation by making the general statement that Respondent asserts “that she is exempt from permitting under the Coastal Act,” unlinked to any specific basis for such an assertion.

In response, the Commission notes: (1) whether a use constitutes a legal nonconforming use with respect to local ordinances is a wholly separate question from whether the use predated the Coastal Act and required a coastal development permit; (2) whether the County issued any citations is not dispositive of whether there was a violation of County ordinances, and whether there was a violation of a County ordinance is not dispositive of whether there is a Coastal Act violation and is not a necessary prerequisite for issuance of a CDO; (3) Respondent provides no explanation for why her alleged mental disability or limited income should be relevant to this proceeding; (4) Commission staff observed a shed on the property (see structure at far left in site photo, Exhibit 2f); and (5) Placement of all solid materials and structures on the property such as trailers, shed and portable toilet has covered and therefore removed vegetation or has been placed in areas that have been cleared of vegetation. The change in intensity of use is evident from examination of the aerial photos of the site, which indicate that no development was present on the property through at least 1987, followed by the appearance of trailers on the property in a 2002 aerial photo (**Exhibit 17**).

#### **4. Respondent’s Defense:**

“...the activity on the property is not inconsistent with the resource protection policies of the Act. There is plenty of access through Pacific Shores to any coastal resources. Indeed, the ingress to the subdivision provides a means for much of the illegal dumping which occurs there. It is the Commission’s management of the Pacific Shores area that has been inconsistent with resource protection, killing the salmon runs and endangering species with manmade flooding practices.

Specifically, the cease-and-desist order has no relation to the cited codes: The order is utterly unrelated to PRC §30230; the Commission has presented no evidence that the property is within any specific designated areas and its own record states that the Pacific Shores land is more than 3,000 feet from any such designated areas. No specific, substantial evidence has been presented that Ms. Wilson jeopardizes water quality under PRC §30231; instead various generalities are mentioned. PRC §30233(c) is inapplicable. The pond on the property preexisted Ms. Wilson’s ownership, Ms. Wilson has information that it existed prior to the enactment of the Coastal Act, and the Commission has provided no substantial evidence that it didn’t pre-exist the Act. No dredging or diking has occurred on the property, and there is no existing estuary or wetland on the property. PRC §30240 is inapplicable; the Commission has offered no substantial evidence that the property is within “environmentally sensitive habitat area,” that 3,000 feet from Lake Earl is “adjacent” to such habitat area, that any of the property use would “significantly degrade”

such a habitat area if such a specific finding were made, or how it would be incompatible with such area.

“Regarding the portable toilet on the site, the Commission admits: “Commission staff has no information about whether it is being adequately maintained.” Conversely then, the Commission staff has no information whether it is being *inadequately* maintained. It thus has no substantial evidence for any of the litany of sewage horrors it presents, at least as it specifically relates to Ms. Wilson’s property.” Statement of Defense at 7-8 (emphasis in original).

“It is the Commission’s management of lakes Earl and Talawa that have killed the salmon runs. Ms. Wilson discharges nothing to the soil or water. She maintains the pre-existing pond on the property assuring that illegal dumping does not occur there. The Commission has presented no substantial evidence that Ms. Wilson is causing resource damages, continuing or otherwise. The Commission has only presented speculation that Ms. Wilson is discharging to the ground or water. Furthermore, nothing that the Commission has cited is evidence that even if Ms. Wilson *was* discharging water to the soil, that resource damages would occur. The Commission has provided no substantial evidence that surface water bodies or groundwater would be impacted.” Id. at 8.

#### **Commission’s Response to Defense #4:**

All of the statements above are comments regarding the staff report’s discussion of potential resource impacts of the alleged violations on the subject property. Findings regarding resource impacts are not required for issuance of the proposed Cease and Desist Order. The staff report clearly states that the Resource Impacts discussion in Section D of this report is provided only as background information. Issuance of the proposed Cease and Desist Order under Section 30810 of the Coastal Act requires only a finding that unpermitted development has occurred on the subject property, which the staff report clearly establishes. All development requires a CDP, and if Respondent had, in fact, applied for a CDP, the information that is required to be submitted as part of a complete CDP application would have allowed staff to evaluate the proposed development under Chapter 3 and staff would have been able to make more specific findings.

Regarding the assertion that “There is plenty of access through Pacific Shores to any coastal resources”, staff has never raised allegations about access being impeded, and the Commission does not now make any access-related finding.

Regarding the statement that there is “no evidence that the property is within any specific designated areas”, the Commission notes that Section 30230 of the Coastal Act protects marine resources and the marine environment generally. It is not limited to the “special protection” that it additionally requires be given to areas and species of special biological or economic significance. The Commission does believe, however, that the property falls under the special protections accorded to Lake Earl and the surrounding estuarine area (of which the subject property is a part). The Lake Earl area is specifically called out for protection under Section 30233 of the Coastal Act as one of the 19 coastal wetlands identified by the Department of Fish and Game report entitled “Acquisition Priorities for the Coastal Wetlands of California” and

development that would alter any coastal wetlands is required to be limited to: “very minor incidental public facilities, restorative measures, [and] nature study...”.

The defense statements quoted above assert “No dredging or diking has occurred on the property, and there is no existing estuary or wetland on the property” but also states “The pond on the property pre-existed Ms. Wilson ownership, Ms. Wilson has information that it existed prior to the enactment of the Coastal Act, and the Commission has provided no substantial evidence that it didn’t pre-exist the Act.” Staff has made no allegations about a pond on the subject property and the subject of a pond was not raised at all prior to the submittal of the defense statements. Aerial photos of the subject property (**Exhibit 17**) do not indicate the existence of a pond on the property in 1972, 1979, or 1987. A pond is also not visible in on the property in a 2002 aerial photo, but it may be obscured by the trailers and other structures on the property. If a pond has been dredged and formed on the property subsequent to the enactment of Coastal Act permit requirements, this would certainly qualify as unpermitted development, namely, dredging and/or grading. The fact that standing water in a pond currently exists on the property suggests that the property does, in fact, contain wetlands, given an exposed intersection of groundwater (the pond surface) with the land. In addition, Section 30233(c) limits “alteration” of certain coastal wetlands, which is more restrictive than being limited to diking, dredging, and filling, so even if there has been no diking, dredging, or filling of Lakes Earl and Tolowa, that does not necessarily mean that there has not been development inconsistent with Section 30233(c).

Without any more reliable evidence other than the Respondent’s assertions regarding the other issues listed above, the Commission cannot conclusively determine the veracity of those statements and does not attempt to do so here, due to the fact, as indicated above, that they are not critical to this order. However, the absence of a more specific response to the other statements in the above-quoted sections of the Statement of Defense should not be interpreted as Commission agreement with the claims in those statements.

## **5. Respondent’s Defense:**

“Ms. Wilson’s property rights are being taken without due process by Commission actions. Those actions include a concerted, ongoing policy of driving Pacific Shores residents, including Ms. Wilson, from their homes and property...”

### **Commission’s Response to Defense #5:**

It is not clear from this response whether Respondent is alleging a procedural due process violation or a substantive due process violation. However, neither allegation would have merit. The Commission had diverged from its standard procedure only in order to be especially accommodating to Respondent. Respondent was given her first notice of the violations more than 3 years ago and repeated notices between then and the issuance of this order. When Respondent received the first notice, she immediately recognized the need to hire counsel, but she had failed to do so even more than 3 years later, when she received the NOI. Nevertheless, staff agreed to postpone formal enforcement action after she finally did hire a lawyer, and this Commission has

accepted and responded to defense statements received long after the normal close of the period for submitting defenses had expired. The hearing process itself will be run in a manner that provides Respondent and/or her representative ample time to present her case orally. There has clearly been no procedural due process violation.

This claim appears to make a substantive due process claim, but it appears to be based exclusively on the affect on her property rights. To the extent that the substantive due process claim is reducible to a claim of takings, see Commission Response to Defense #6, below. To the extent the defense statements were intended to make an alternative substantive due process claim, there is absolutely no indication of the basis for that claim or what substantive due process right is at issue, and thus, the Commission cannot respond.

The proposed enforcement order is not a taking and does not deprive Respondent of due process; the order simply requires that Respondent cease and desist from violating the Coastal Act by maintaining unpermitted development. Exercising regulatory authority under valid state law does not constitute a taking. No application for proposed development has been received from Respondent; the enforcement hearing is not a permit matter and is not being held for the purpose of determining what sorts of development on the subject property could be found consistent with the Coastal Act.

The proposed enforcement action is not about whether development is possible on the lot. Moreover, although it is possible that a regulation that denies all economically beneficial or productive use of land without compensation might be a taking under the appropriate circumstances, the enforcement provisions in the Coastal Act that are at issue here just address the fact that development without a permit is a violation of the Coastal Act. Coastal Act regulations aren't denying economically beneficial use.

## **6. Respondent's Defense:**

"The acts of the Commission deprive Ms. Wilson and like-situated Pacific Shores residents of the use of their properties without due compensation and thereby constitutes a taking under the Fifth Amendment of the U.S. Constitution.

The cease-and-desist order is part of an ongoing scheme to deprive Pacific Shores residents of the rights and title to their properties through a program to intentionally flood their property; to preclude, prevent or delay the provision of basis [sic] health and safety services that would be provided to similarly situated citizens; and to obtain property of Ms. Wilson and other Pacific Shores residents for ownership by various non-profit and conservancy entities functioning as proxies, agents or joint venturers with the Commission for that purpose.

The actions of the Commission constitute a taking of Ms. Wilson's property without any compensation.

Ms. Wilson and similarly-situated Pacific Shores residents have the same constitutional rights to health and safety services, accommodation, property use and liberty as similarly situated citizens. Those rights are not abrogated by their location in a California coastal zone.

The director and commissioners of the California Coastal Commission, in their individual capacities, have been engaged in and currently are engaged in a coordinated scheme to deprive Ms. Wilson and other Pacific Shores residents of their property by actions designed to force them to sell at reduced prices or simply to leave, including actions such as unwarranted cease-and-desist orders; intentional flooding; blocking, preventing or discouraging provision of basic health and safety services and encouraging others to take such actions.

Ms. Wilson and other Pacific Shores residents have been deprived of their liberty and property rights through those actions of the Commission and its director and commissioners in an individual capacity, in that Ms. Wilson and other Pacific Shores residents cannot live on land they lawfully purchased, or live on it with adequate health and safety, emergency response, and basic services such as water and electricity. Furthermore, their health in [sic] endangered indirectly through flooding and other practices intended by the Commission and its director and commissioners to drive Pacific Shores back to its natural state.”

**Commission’s Response to Defense #6:**

The proposed enforcement order is not a taking; the order simply requires that unpermitted development must be removed. No application for proposed development has been received from Respondent; the enforcement hearing is not a permit matter and is not being held for the purpose of determining what sorts of development on the subject property could be found consistent with Ch. 3 of the Coastal Act. See also Commission Response to Defense #5, above. No taking can have occurred before the Commission has even been given the opportunity to review a permit application and made a final decision. Palazzolo v. Rhode Island (2001), 533 U.S. 606, 618 and 620, 121 S.Ct. 2448, citing Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City (1985) 473 U.S. 172, 105 S.Ct. 3108.

The purchase of properties from willing sellers at Pacific Shores is administered through the State Wildlife Conservation Board. The Commission does not direct or oversee these purchases. Commission staff has, however, informed property owners at Pacific Shores that obtaining a CDP for proposed permanent residential development is highly problematic because of the multiple Chapter 3 resource protection requirements, and that voluntary sale of their property is one possible alternative.

While it is true that Pacific Shores has no developed services for water or sewer, this is not a result of Commission actions or the proposed enforcement action. See further discussion of this issue in Commission Response to Defense #9, below.

The Commission’s only “agenda” is to protect coastal resources pursuant to its charge under the Coastal Act. To the extent that protecting coastal resources may involve denying certain uses on this land or managing the breaching of the lake in a way that disrupts existing unpermitted

development, the Commission may indeed take such actions, but only for the aforesaid purpose of protecting the resources. The Commission has no intent to harass or punish or even inconvenience the residents of Pacific Shores except to the extent that their residences are inconsistent with the Coastal Act.

**7. Respondent's Defense:**

“The Commission’s actions violate the California Constitution’s protections of equal protection and due process, Art. I, §§ 7 and 15, in that they have deprived Ms. Wilson and other Pacific Shores residents of their liberty and property rights in that Ms. Wilson and other Pacific Shores residents cannot live on land they lawfully purchased, or live on it with adequate health and safety, emergency response, and basic services such as water and electricity. Furthermore, their health in [sic] endangered indirectly through flooding and other practices intended by the director and commissioners to drive Pacific Shores back to its natural state.

The director and commissioners knew or reasonably should have known that their actions would deprive Ms. Wilson and similarly situated Pacific Shores residents of their constitutional property rights, including rights of due process, equal protection, and freedom from taking under the U.S. Constitution.

**Commission's Response to Defense #7:**

This defense alleges violations of the California Constitution’s “protections of equal protection and due process,” but only “in that [the Commission’s actions] have deprived [Respondent and others] of their liberty and property rights in that [they] cannot live on land they lawfully purchased, or live on it with adequate health and safety, emergency response, and basic services . . .” Statement of Defense at 11:6-10 (emphasis added). As an initial matter, which Commission actions Respondent is claiming to have violated these provisions is unclear. Respondent seems to be attacking a whole host of historical and present Commission actions, as well as an alleged “scheme” or conspiracy to deprive Respondent and the Pacific Shores residents generally of their homes, but Respondent has not given specific examples of the actions to which they refer or that they claim support their conspiracy theory. Again, the only Commission action at issue in this proceeding is the action proposed in this proceeding – issuance of a cease and desist order against this Respondent.

Liberty and property rights are, indeed, protected by the due process clauses of the sections of the California Constitution cited by Respondent (Art. I, §§ 7 and 15), but those prohibitions are not absolute. As the “due process” label suggests, both Section 7(a) and Section 15 prevent deprivations of liberty and property rights only if such deprivations occur without due process of law. As is indicated in Commission Response to Defense #5, due process violations come in two forms: procedural due process violations and substantive due process violations. Both are addressed in that response, which is incorporated herein by reference.

This defense also raises an equal protection claim, though the nature of the claim is unclear. Equal protection guarantees are not directly linked to any specific rights, but relate to the general

treatment of all individuals by the government. This defense does not allege any way in which Respondent has been treated differently than similarly situated neighbors. In fact, it alleges that she has been treated the same as similarly situated neighbors but that the neighborhood as a whole has been subject to a policy targeting them. With respect to this claim, see response to Defense 6, above. Again, it is also noteworthy that this is a single enforcement action against a single party, and in that context, the courts have granted enforcement agencies great discretion. See, e.g., Genesis Env'tl Services v. San Joaquin Valley (2003), 113 Cal.App.4th 597, 607, n. 11 (“The equal protection clause historically has granted greater deference to discriminatory decisions by prosecutors who have limited resources with which to prosecute crime than to decisions made by officials in other contexts), *citing, inter alia*, Esmail v. Macrane, 53 F.3d 176 (7<sup>th</sup> Cir. 1995) (selective prosecution can involve wholly random enforcement and definitely involves dramatically unequal treatment, but it is nevertheless not actionable under the federal Constitution/Equal Protection Clause), *id.* at 178-79. See also Baluyut v. Superior Court (1996) 12 Cal.4th 826 (“an equal protection violation does not arise whenever officials ‘prosecute one and not [another] for the same act’ [citation omitted]; instead, the equal protection guarantee simply prohibits prosecuting officials from *purposefully and intentionally singling out individuals for disparate treatment on an invidiously discriminatory basis.*” Baluyut, 12 Cal.4th at 834, *quoting* Murgia v. Municipal Court (1975), 15 Cal.3d 286, 297 (emphasis added by court in Baluyut).

#### **8. Respondent’s Defense:**

“...the cease-and-desist order violates the California Environmental Quality Act (CEQA) in that it constitutes an incremental project, which has the potential of significant environmental impacts as will be discussed below. Those impacts are required to be reviewed by an environmental impact report under CEQA before approval of the cease-and-desist order.”

#### **Commission’s Response to Defense #8:**

Coastal Commission enforcement proceedings are categorically exempt from CEQA. Implementation guidelines for CEQA (Title 14, C. C. R. Division 6, Chapter 3. Article 19) include the following Categorical Exemptions that apply to Coastal Commission enforcement proceedings:

15307. Actions by Regulatory Agencies for Protection of Natural Resources. Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.

15308. Actions by Regulatory Agencies for Protection of the Environment. Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.



Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.

15321. Enforcement Actions by Regulatory Agencies. Class 21 consists of:

(a) Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following:

(1) The direct referral of a violation of lease, permit, license, certificate, or entitlement for use or of a general rule, standard, or objective to the Attorney General, District Attorney, or City Attorney as appropriate, for judicial enforcement;

(2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.

(b) Law enforcement activities by peace officers acting under any law that provides a criminal sanction;

(c) Construction activities undertaken by the public agency taking the enforcement or revocation action are not included in this exemption.

**9. Respondent's Defense:**

“The California Coastal Act was passed after approval of a voter proposition in 1972, requiring local coastal plans to be adopted by all California counties with coastal lands, which included those of Pacific Shores. The County of Del Norte submitted a proposed plan in the late 1970s. However, the Commission has refused to approve the County plan, thus arrogating [sic] control over most aspects of actual Pacific Shores land use management since that time.” Statement of Defense at 3.

“Since its acquisition of control over Pacific Shores land use, the Commission has set a stated but informal agenda to acquire the private property title held by the owners of all Pacific Shores lots to be put in title of various surrogates, including the California Wildlife Conservancy, client non-profit environmental groups and other state agencies.

“The Commission has sought to achieve this agenda through a variety of tactics, including purchase from willing sellers, but more forcefully through refusal to grant any permits to conduct any development whatsoever in Pacific Shores, to stymie any efforts to maintain or improve the infrastructure of the subdivision and by driving out residents with intentional flooding.” Id. at 3.

“There has never been a public purpose articulated by the Commission for its program of driving Pacific Shores residents off the land. However, the program is well-known and demonstrated.” Id. at 10.

“The Commission’s program has deprived Ms. Wilson and Pacific Shores residents of basic health and safety services, even including 911 emergency response. Local government, at the direction of the Commission, its director and members, have ceased attempting to provide such services as safe roads, flood control, drainage, electricity, water and sewer.” Id.

**Commission’s Response to Defense #9:**

The statements above do not raise any specific defenses related to the issue of whether unpermitted development is present on the subject property and are therefore not relevant to the issuance of the proposed enforcement order. Most of the statements above are incorrect; some are contradictory, and the Commission is therefore responding to these comments in order to correct statements that are in error.

The Commission did not refuse to approve the Del Norte County Local Coastal Program (“LCP”). The Commission approved Del Norte County’s LCP in October 1983, but the Pacific Shores subdivision was excluded from the LCP as an Area of Deferred Certification (“ADC”) because the Pacific Shores ADC was created and agreed to by the Commission and the County on June 3, 1981. Unresolved issues for the subject ADC are: natural hazards, water quality, environmentally sensitive habitat areas, public works, and location of new development. These issues remain unresolved.

On August 29, 1985 the Commission approved CDP 1-85-38 which allowed for formation of a special district to finance a special study to address the issues in the Pacific Shores subdivision. The County Board of Supervisors approved the formation of this special district in January 1987. However, these actions by the County and the Commission have not led to resolution of the highly complex issues in this ADC. In July of 1992, the County processed an EIR scoping study that could have led to proposed land use and zoning district designations and a subsequent LCP amendment to resolve this ADC. To date, no LCP submittal has been prepared by the County to address this ADC. On August 8, 2006 the County Board of Supervisors passed resolutions to propose a change of organization of the Pacific Shores Subdivision California Water District (hereinafter “District”). The County resolutions note that the District was formed in 1987 for the purposes of providing water supply and distribution and sewage treatment and disposal, and that the District created a Mello-Roos Communities Facilities District (“CFD”) in order to raise monies to pay expenses related to planning, study and administration needed to design and build public facilities.

For sixteen years, subdivision lot owners have paid substantial annual assessment special taxes to the CFD and District, totaling millions of dollars, but lot owners have yet to receive any water or sewer services, nor have any plans been prepared or submitted to the County that would lead to the construction of such necessary services. The District has spent virtually all collected funds on legal fees, incomplete environmental studies and the expenses of its Board of Directors. The

District and CFD have achieved no beneficial outcome of the outstanding need for public services. Therefore the County Board of Supervisors, pursuant to Government Code Section 56654, has applied to the Local Agency Formation Commission (“LAFCO”) to initiate dissolution of the Water District and to investigate ending or suspending its special tax levied on lot owners through its CFD. Thus, the need for adequate public services is still outstanding and the County is not in a position to submit an LCP amendment to allow the Pacific Shores subdivision ADC to become part of its certified County LCP. The Commission therefore still possesses jurisdiction for issuing Coastal Development Permits, as well as for enforcing the provisions of the Coastal Act in this area.

The Coastal Commission does not hold title to property and cannot purchase or acquire title to property. The Coastal Commission does not direct the purchase or acquisition activities of other State agencies or of any other entity or individual. The reference above to “client non-profit environmental groups” does not make any sense, because while many environmental and non-profit groups are often supportive of Commission enforcement activities, such groups are not “clients” of the Coastal Commission. The Commission serves the people of the state of California and ensures that all development proposed in the coastal zone is properly permitted pursuant to the permit requirements of the Coastal Act. The Commission cannot stand by and allow unpermitted development to remain without taking enforcement action. It is unfair to the many applicants who apply and receive coastal development permits in a lawful manner to allow those who choose to not seek permits to enjoy the benefit of their decisions to violate the law.

The Coastal Commission has not refused “to grant any permits to conduct any development whatsoever in Pacific Shores”. In addition to the permit granted for the formation of the Water District cited above, only 4 other permit applications have ever been submitted to the Commission for consideration; of these, 1 application was returned to a property owner who decided to voluntarily remove unpermitted development from the property, 2 applications are incomplete (and have remained incomplete for a significant period of time) and require substantial additional information before they can be filed and scheduled for hearing, and 1 application was filed and subsequently denied because the proposed development could not be found consistent (as is required) with the Chapter 3 resource protection policies of the Coastal Act.

The following statements (excerpted from above) are internally inconsistent and contradict each other: “Since its acquisition of control over Pacific Shores land use, the Commission has set a stated but informal agenda to acquire the private property title...” “There has never been a public purpose articulated by the Commission for its program of driving Pacific Shores residents off the land.”

The Commission disagrees with these statements and notes that the Commission is mandated by State law to protect coastal resources through its implementation of the provisions of the California Coastal Act. Any development that is proposed by property owners within the Coastal Zone must first be proposed in a CDP application deemed suitable for filing and action, and must then also be found consistent with the Chapter 3 resource protection policies of the Coastal Act before it can be recommended for approval of a Coastal Development Permit.

**10. Respondent's Defense:**

“Numerous floods were recorded from Lake Earl, including major floods in 1861, 1890, 1927, 1950, 1953 and 1955. In 1955, the Del Norte Flood Control District was formed, but large floods still occurred again in 1964, 1966, and 1971. The 1964 flood covered 9,300 acres and drowned 360 head of livestock. The level of the lake reached eight feet during this flood.” Statement of Defense at 3.

“Since 1986, however, at the invitation of the Commission, the federal Army Corps of Engineers assumed flood management of the lakes. Subject to the Commission’s approval and at its direction, all known permits issued by the Corps of Engineers to breach Lakes Earl and Talawa authorized breaching only at or above the eight-foot mean sea level (MSL), with the exception of allowing a breach to occur on February 15 if lake levels are above five-foot MSL. Thus the Pacific Shores subdivision, with drainage and improvements engineered at four-foot lake levels, is intentionally subjected to regular flooding.

“Lake levels from 1998 through 1995 reach above eight feet MSL at least once annually. Lake level before a breach was performed during this time frame averaged 9.35 feet MSL. Lake levels rose above nine feet MSL five of eight years (62.5 percent of the time); lake levels rose above 10 feet MSL on two of eight years (25 percent).

“The change in management of the Lakes, from the historical breaching at 4-6 feet MSL to the current breaching at greater than eight feet MSL occurred without any formal decision by the Coastal Commission, the Corps of Engineers or the Del Norte County Flood Control District, which performs all authorized breaches of the lakes.

“As a consequence of the flooding, the lots within Pacific Shores are constantly subject to direct and indirect flooding, including Ms. Wilson’s property. The surface and subsurface water impacts to Ms. Wilson’s property and other Pacific Shores property include infiltration of unlined solid waste disposal which has caused pollution of soil and water.” Id.

**Commission's Response to Defense #10:**

Similar to Defense #9, the statements above in Defense #10 do not raise any specific defenses related to the issue of whether unpermitted development is present on the subject property, and are therefore not relevant to the issuance of the proposed enforcement order. Staff is responding to these comments, however, in order to correct statements that are in error.

Respondent’s own statements point out the fact that Pacific Shores is located in an area that regularly floods. Historically, seasonal flooding has always been part of the Pacific Shores area, long before the creation of the Pacific Shores subdivision. The breaching of Lake Earl at a given water elevation above sea level is determined by the existing mandate of multiple regulatory agencies to protect and manage the natural resources in the surrounding area, and is not designed to cause impacts to adjacent areas in Pacific Shores that are already subject to seasonal flooding.

Comments regarding “historical breaching at 4-6 feet MSL” are unsupported by any evidence and are not pertinent to the issue of whether unpermitted development is located on the subject property and whether that unpermitted development should be removed.

The Commission has received requests from the County to allow breaching of Lake Earl and has permitted regular breaching in order to *prevent* flooding of public roads and low-lying wells and septic systems. Contrary to Respondent’s statements, the Pacific Shores subdivision does not have approved, properly engineered drainage improvements in place within the subdivision to allow for residential build-out.

**11. Respondent’s Defense:**

“The definition [of development] then, requires a ‘solid material or structure’ and a finding that the recreational vehicles and portable toilets are such. Such a finding is lacking in the staff report.” Statement of Defense at 5:18-19.

The term ‘development’ is inapplicable; therefore Ms. Wilson denies this finding.” Id. at 6:26-27.

**Commission’s Response to Defense #11:**

Respondent’s attorney argues that the “staff report” lacks a finding that recreational vehicles and portable toilets are solid material or structures. We assume this reference to “staff report” is to the report that Commission staff prepared for the Commission’s November hearing. It is true that that staff report did not spell out the obvious fact that recreational vehicles and portable toilets are solid materials and structures. The Commission does not need to spell out every such link as long as it “bridges the analytic gap between the raw evidence and [the] ultimate decision or order” and reveals “the analytic route [it] traveled from evidence to action.” *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515. However, in an abundance of caution, staff included such findings in its revised staff report, and the Commission now adopts those extremely meticulous findings.

Staff recommends that the Commission issue the following Cease and Desist Order:

### **CEASE AND DESIST ORDER CCC-06-CD-08, Wilson**

Pursuant to its authority under Public Resource Code Section 30810, the California Coastal Commission hereby orders and authorizes Janice Wilson, her agents, contractors and employees, and any person(s) acting in concert with any of the foregoing (hereinafter referred to as “Respondent”) to:

1. Cease and desist from engaging in any further unpermitted development on the property identified by Del Norte County as Pacific Shores Subdivision Block 7, Lot 10, Assessor’s Parcel Number 107-071-17 (hereinafter referred to as “subject property”).
2. Cease and desist from maintaining unpermitted development on the subject property.
3. Take all steps necessary to ensure compliance with the Coastal Act (California Public Resources Code sections 30000 to 30900), including removal of all unpermitted development from the subject property, allowing vegetation to grow back and returning impacted areas of the property to their pre-violation condition, according to the following terms and conditions:
  - a. All unpermitted development, including (but not limited to) installation of a culvert, placement of fill (in or adjacent to wetlands), (long term) placement of recreational vehicles, sheds and a portable toilet, construction of a fence, and the unpermitted development specifically identified in Section III of this Order, on the property identified in Section II of this Order shall be addressed no later than **March 15, 2007**. All materials that have been placed on the subject property without a CDP constitute unpermitted development and must be completely removed.
  - b. Any unpermitted fill materials consisting of soil, sand, culvert, or other similar materials that have been placed on the subject property shall be removed with hand labor utilizing hand tools such as rakes and shovels to avoid impacts to the underlying vegetation. All fill removal shall be conducted with great care for the adjacent and underlying vegetation and shall not result in the creation/excavation of pits or holes on the subject property. The fill shall be removed only as far as the level that reinstates the original site grade that existed prior to the placement of the fill on the subject property.
  - c. The removal of all unpermitted development on the subject property shall be completed no later than **March 15, 2007**. Respondent shall submit photographs of the property that clearly document the completion of all removal activities no later than **April 15, 2007**, to the attention of Sheila Ryan in the Commission’s San Francisco office at the address listed above.

- d. Other than those areas subject to removal and restoration activities, the areas of the property and surrounding areas currently undisturbed shall not be disturbed by activities required by this Order.
- e. Waste materials must be disposed of at a licensed facility, preferably outside Coastal Zone (appropriate for the type of waste being disposed of). If the disposal site is to be located within the Coastal Zone, a CDP for such disposal is required and must be obtained prior to such disposal.

#### **I. Persons Subject to the Order**

Persons subject to this Cease and Desist Order are Respondent, as defined above to include Janice Wilson, her agents, contractors and employees, and any persons acting in concert with any of the foregoing.

#### **II. Identification of the Property**

The property that is subject to this Order is identified by Del Norte County as Pacific Shores Subdivision Block 7, Lot 10, Assessor's Parcel Number 107-071-17.

#### **III. Description of Unpermitted Development**

Unpermitted development includes (but may not be limited to): installation of a culvert, placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, (long term) placement of recreational vehicles, sheds and a portable toilet, and construction of a fence.

#### **IV. Commission Jurisdiction and Authority to Act**

The Commission has jurisdiction over this matter, as the property at issue is located within the Coastal Zone and in an area not covered by a certified Local Coastal Program. The Commission is issuing this Order pursuant to its authority under the Coastal Act in Public Resources Code Section 30810.

#### **V. Submittal of Documents**

All documents submitted pursuant to this Order must be sent to:

California Coastal Commission  
Attn: Sheila Ryan  
45 Fremont St., Suite 2000  
San Francisco, CA 94105-2219

## **VI. Effective Date and Terms of the Order**

The effective date of the Order is the date of approval by the Commission. The Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

## **VII. Findings**

The Order is issued on the basis of the findings adopted by the Commission at the November 2006 hearing, as set forth in the attached document entitled "Staff Report and Findings for Issuance of Cease and Desist Order".

## **VIII. Compliance Obligation**

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties, as authorized under Section 30821.6, of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which each such compliance failure persists, in addition to any other penalties authorized under Section 30820.

## **IX. Extension of Deadlines**

The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least ten days prior to expiration of the subject deadline.

## **X. Appeal**

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom this Order is issued may file a petition with the Superior Court for a stay of this Order.

## **XI. Modifications and Amendments to this Order**

This Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of Title 14 of the California Code of Regulations.

## **XII. Government Liability**

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent in carrying out activities required and authorized under this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or Respondent's agents in carrying out activities pursuant to this Order.



### **XIII. Site Access**

Respondent shall provide access to the property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under this Order. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the following areas: (1) the portions of the Subject Property on which the violations are located, (2) any areas where work is to be performed pursuant to this Order or pursuant to any plans adopted pursuant to this Order, (3) adjacent areas of the property, and (4) any other area where evidence of compliance with this Order may lie, as necessary or convenient to view the areas where work is being performed pursuant to the requirements of this Order, for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting, documenting, and reviewing the progress of Respondent in carrying out the terms of this Order.

### **XIV. Successors and Assigns**

This Order shall run with the land, binding all successors in interest, future owners of the property, heirs and assigns of Respondent. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this Order.

### **XV. No Limitation on Authority**

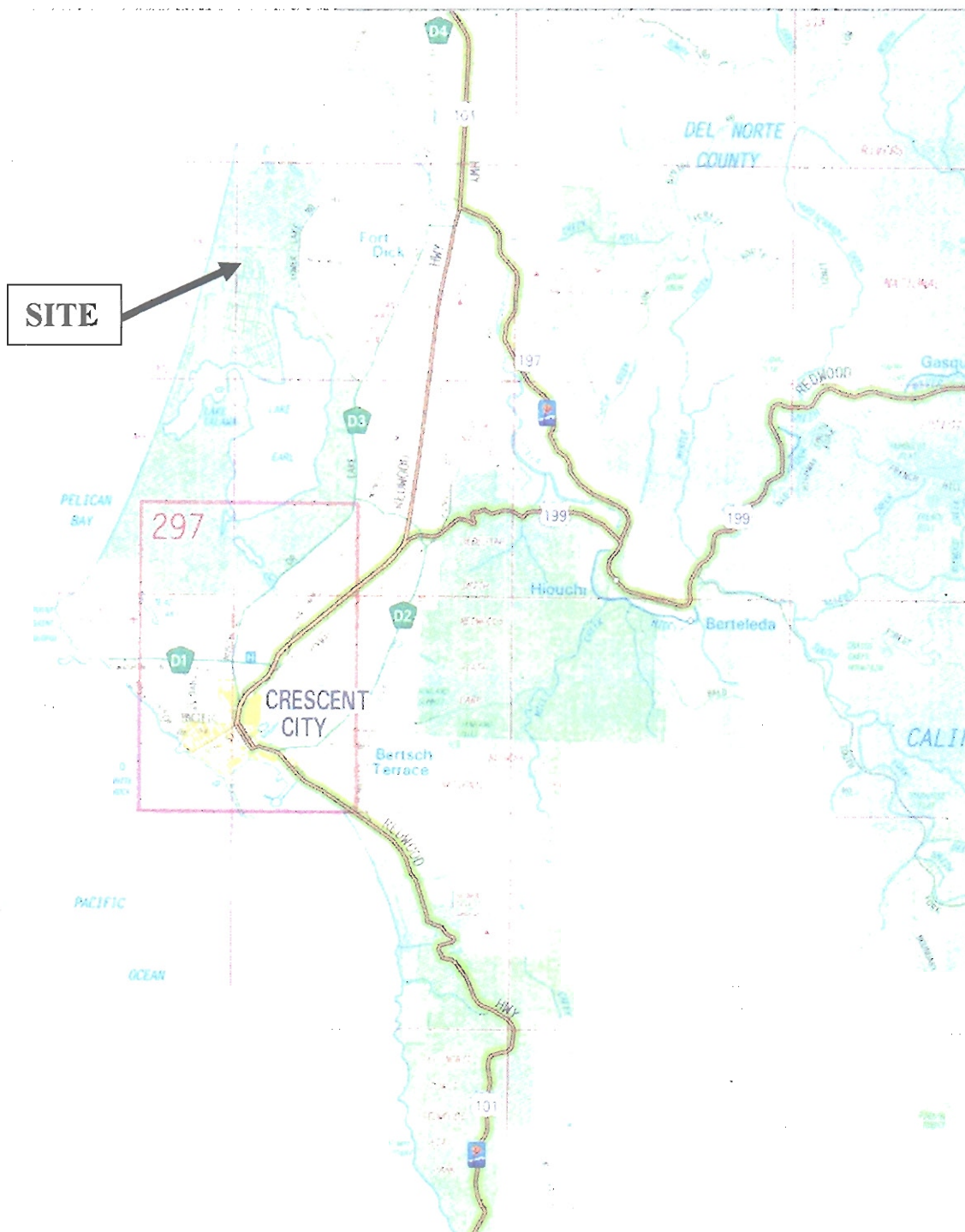
Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Order.

Executed in \_\_\_\_\_ on \_\_\_\_\_,  
on behalf of the California Coastal Commission.

By: \_\_\_\_\_ Peter Douglas, Executive Director

## **Exhibits**

1. Site map.
2. Site photos.
3. Notice of Violation letter dated July 18, 2003 from Commission staff to Respondent regarding the unpermitted development on the subject property.
4. Letter dated July 30, 2003 from Respondent to Commission staff indicating that Respondent intended to consult with legal counsel and a property owner's association before responding further.
5. Letter dated December 18, 2003 from Commission staff to Respondent regarding the unpermitted development on the subject property.
6. Letter dated July 9, 2004 from Commission staff to Respondent regarding the unpermitted development on the subject property.
7. Letter dated July 16, 2004 from Respondent to Commission staff, asserting that the Commission was unconstitutional with no power over Respondent or Respondent's property.
8. Letter dated July 21, 2004 from the Commission's legal staff to Respondent, explaining that the litigation challenging the constitutionality of the method of appointing Commission members was pending, but that no action had been taken, judicial or otherwise, that prevented the Coastal Commission from enforcing the permit requirements of the Coastal Act.
9. Letter dated August 23, 2004 from Commission staff to Respondent (fourth notice of violation letter) regarding the unpermitted development on the subject property.
10. Notice of Intent (NOI) dated June 21, 2006 to record a Notice of Violation Action ("NOVA") and to commence Cease and Desist Order and Restoration Order Proceedings.
11. Notice of Intent (NOI) dated September 7, 2006 to commence Cease and Desist Order and Restoration Order Proceedings.
12. Letter dated September 21, 2006 from Respondent to Commission staff.
13. Letter dated September 29, 2006 from Commission staff to Respondent.
14. Letter dated November 1, 2006 from Respondent's attorney to Commission staff.
15. Letter dated November 2, 2006 from Commission staff to Respondent's attorney, granting postponement of an enforcement hearing from November 2006 until December 2006.
16. Defense materials dated November 13, 2006 and submitted by Respondent's attorney.
17. Parcel map and aerial photos of subject property.





**Exhibit 2a.** Unpermitted trailers, fence and portable toilet on subject property.



**Exhibit 2b.** Close-up view of vehicle, unpermitted fence and portable toilet on subject property.





**Exhibit 2c.** Unpermitted trailers, fence, and debris on subject property.



**Exhibit 2d.** Unpermitted trailers, fence, and debris on subject property.



**Exhibit 2e.** September 8, 2006 photo of unpermitted trailers, fence and portable toilet on subject property.



**Exhibit 2f.** October 11, 2006 photo of unpermitted shed (at far left) and trailers on subject property.



## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET • SUITE 200

EUREKA, CA 95501-1865

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

MAILING ADDRESS:

P. O. BOX 4908

EUREKA, CA 95502-4908

Regular and  
CERTIFIED MAIL

7002 2030 0000 2597 0540

7002 2030 0000 2597 0557

July 18, 2003

Robert Clawson and Janice Wilson  
PO Box 1805  
Crescent City, CA 95531-1805

Occupant  
110 Martin Street  
Crescent City, CA 95531

**RE: Coastal Act Violation File No. V-1-03-009;** Unpermitted placement of fill in wetlands, change in intensity of use from a vacant lot to a residence, removal of vegetation, installation of a fence, port-a-potty, culvert, and recreational vehicles at 110 Martin Street, Crescent City, Pacific Shores subdivision Block 7, Lot 10, APN 107-071-17 in Del Norte County.

Dear Property Owners and Occupant:

Robert Clawson and Janice Wilson are listed as owners of record for property located at 110 Martin Street, Crescent City, Pacific Shores subdivision Block 7, Lot 10 APN 107-071-17 in Del Norte County. Coastal Commission staff has confirmed the existence of unpermitted development activities at the above-referenced property, consisting of placement of fill in wetlands, change in intensity of use from a vacant lot to a residence, removal of vegetation, and the installation of a fence, port-a-potty, culvert, and recreational vehicles. These activities constitute development as defined in section 30106 of the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; ...change in the density or intensity of use of land; ... construction, reconstruction, demolition, or alteration of the size of any structure...

Pursuant to Coastal Act section 30600, any person wishing to perform or undertake development in the coastal zone is required to obtain a coastal development permit (CDP), in addition to any other permit required by law, authorizing such development before such development takes place. We have reviewed our records and have determined that no CDP exists authorizing the above-mentioned development activity on your property.

To begin resolution of this violation on the subject property with the Coastal Commission, you may follow one of two courses of action. You may submit an application for a CDP with the Coastal Commission, proposing to remove the unpermitted development and restore the subject property to the condition it was in before the unpermitted development occurred. Alternatively, you may submit an application applying for after-the-fact CDP authorization of the unpermitted development.

If you choose to apply for after-the-fact authorization of the unpermitted development, your CDP application must include a detailed and comprehensive project description, outlining the exact nature of the development that has already occurred, including placement of fill, change in intensity of use from a vacant lot to a residence, clearing of vegetation, and the erection of the above-mentioned structures on the property. For each of the activities described above, your project description must include details as to the exact materials used in the development, the location of each aspect of the unpermitted development, the size of the development (in all three dimensions), the process of installation, and any equipment used in the development activities. Please indicate how your property will be serviced for water and sewer. Finally, please describe any exterior lighting that would be used to illuminate the site.

Your property is located in an area with pervasive environmentally sensitive habitat, including wetlands and habitat for the Oregon Silverspot butterfly, a species listed as threatened by the federal government. Therefore, in addition to a detailed project description and other requirements spelled out in the CDP application, an application for after-the-fact authorization must also be accompanied by a wetlands delineation and a biological habitat assessment report for your property. The wetlands delineation must be prepared by a qualified wetlands biologist, and must describe the exact location and nature of the wetlands on the property, pursuant to the Coastal Act's definition of wetlands. Your application must show the location of all development activities in relation to any wetlands present on or in proximity to the property, and must identify adequate buffer areas as needed to protect the wetland areas. The biological habitat assessment report must be prepared by a biologist with experience in reviewing habitat critical to species listed by the federal or state government as threatened or endangered, and that are known to be or have the potential to be present in the Pacific Shores subdivision area. The report must address the issue of any fish or wildlife species that use any non-wetland environmentally sensitive habitat areas (ESHAs) present on your property.

Typically, a permit applicant hires a consultant with expertise in these areas to prepare these reports. Hiring an environmental consultant can cost up to several thousand dollars, and preparing these reports can take several months. It is the responsibility of the applicant to find and hire a consultant, and to pay the relevant consulting fees.

A completed application for after-the-fact authorization to retain the unpermitted development must therefore contain, 1) a completed CDP application form, including a comprehensive and detailed project description, as well as any other material required in the application, 2) a \$1200 non-refundable application fee, 3) a wetlands delineation prepared by a qualified wetlands biologist, and 4) a biological habitat assessment report, outlining the presence or absence of any state or federal listed species on your land, prepared by a biologist with experience in this field.



You may instead choose to apply for a permit to remove the unpermitted development, and restore the property to the condition it was in before the unpermitted development activities occurred. Removal of the unpermitted development and restoration of the property would involve: abandoning the use of the property as a residence, and removing all structures on the property as well as any fill that has been placed on the property. Your project description must include a detailed description of how the removal of the structures and fill will be achieved, including a description of any equipment to be used in removal, and a clear indication of the disposal site(s) proposed for the removed structures and fill material. Because of the potential presence of wetlands and/or other ESHA, an application for removal and restoration of the property must also be accompanied by a biological assessment addressing the presence, extent, and possible impacts to wetlands and other ESHA.

No matter which type of project application you choose to submit, after our office receives your permit application and accepts it as complete for filing, your project will be reviewed by staff for consistency with chapter three policies of the Coastal Act. Based on this consistency analysis, staff will make a recommendation for approval, approval with conditions, or denial of your project. The staff report and recommendation will then be scheduled for a public hearing before the Commission, and the Commission will at that time make a final decision concerning your project. Based on our understanding of the development activities, as described earlier in this letter, it is our belief that it will be easiest for staff to find an application to remove and restore consistent with chapter three policies of the Coastal Act. Finding an application for after-the-fact authorization to be consistent with the Coastal Act will be more difficult, if not impossible, due to the significant wetland and habitat resources already mentioned.

It is critical that you stop immediately all unpermitted development activities, and advise us within the next week (no later than **August 1, 2003**), as to how you plan to resolve this violation. Please submit to this office by **September 1, 2003**, a completed CDP application for either removal of the unpermitted development and restoration of the site, or after-the-fact authorization to retain the unpermitted development. I have included a blank CDP application form with this letter.

Commission enforcement staff prefers to work cooperatively with alleged violators to resolve Coastal Act violations administratively, through the permitting process. However, if you fail to meet our requested permit application deadline, Commission staff will be forced to conclude that you do not wish to resolve this violation administratively and we will be obligated to seek formal action by the Commission to resolve this matter. For that reason, I provide the following citations of the Coastal Act so that you fully understand the consequence of violation cases subject to formal action.

Section 30803 of the Coastal Act authorizes the Commission to maintain a legal action for declaratory and equitable relief to restrain any violation of the Act. Coastal Act section 30809 states that if the Executive Director of the Coastal Commission determines that any person has undertaken or is threatening to undertake any activity that requires a permit from the Coastal Commission without first securing a CDP, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Commission may also

issue a permanent cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Moreover, section 30811 authorizes the Commission to order restoration of a site where development occurred without a CDP, is inconsistent with the Coastal Act, and is causing continuing resource damage.

In addition, section 30802(a) provides for civil liability to be imposed on any person who performs or who undertakes development without a coastal development permit or in a manner that is inconsistent with any coastal development permit previously issued by the Commission, in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30802(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit or that is inconsistent with any coastal development permit previously issued by the Commission, when the person knowingly and intentionally performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30821.6 provides that a violation of either type of cease and desist order or of a restoration order can result in the imposition of civil fines of up to \$6000 for each day in which the violation persists. Finally, Section 30822 allows the Commission to maintain a legal action for exemplary damages, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount necessary to deter further violations.

You may contact me at our Eureka Office, at (707) 445-7833, or in writing at the letterhead address, to discuss resolution of this enforcement action. If you have questions concerning applying for a CDP, please contact Permit Analyst Jim Baskin, also at the phone number listed above.

Sincerely,



Audrey McCombs  
Enforcement Staff  
California Coastal Commission, North Coast District Office

cc: Bob Merrill, North Coast District Office  
Nancy Cave, Statewide

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
Occupant  
110 Martin Street  
Crescent City, CA 95531

**COMPLETE THIS SECTION ON DELIVERY**


A. Signature  ☐ Agent  
☐ Addressee  
B. Received by (Printed Name) Janice Wilson C. Date of Delivery 8-5-03  
D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

Exhibit 3  
CCC-06-CD-08  
(Wilson) Page 4 of 4

2. Article Number  
(7-digits from service label)

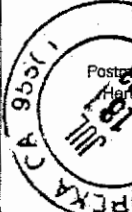
7002 2030 0000 2597 0557

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-154

<b>U.S. Postal Service™</b>	
<b>CERTIFIED MAIL™ RECEIPT</b>	
Domestic Mail Only; No Insurance Coverage Provided	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL U.S. MAIL</b>	
Postage	\$ 1.06
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.11



Sent To Robert Clawson & Janice Wilson  
Street, Apt. No., or PO Box No. P. O. Box 1805  
City, State, ZIP+4 Crescent City, CA 95531-1805

To The California Coastal e Commission  
P.O. Box 4908  
Eureka, Calif. 95502-4908

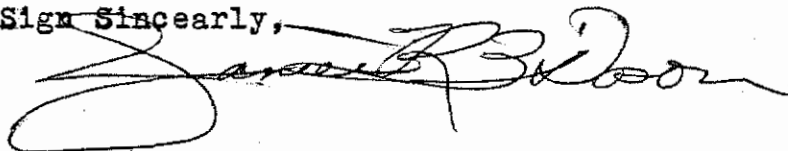
I recieved your letter dated July 18, 2003  
Todays July 30, 2003

I find these claims refrenced in this letter  
very disturbing and require additional time; to consult  
with legal counsel, as well as our property owners association  
befor responding further.,

I am the sole owner of 110 Martin Cresent City, Calif.  
I was unable to be informed of your letter sooner- please  
keep me informed or and awair at my new address

Janice Wilson  
P.O. Box 356  
Fort Dick, Ca.  
95538

Sign Sincearly,



RECEIVED

AUG 04 2003

CALIFORNIA  
COASTAL COMMISSION

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



## REGULAR AND CERTIFIED MAIL

7002-0460-0003-8376-4419

December 18, 2003

Janice Wilson  
PO Box 356  
Fort Dick, CA 95538

**RE: Coastal Act Violation File No. V-1-03-009;** Unpermitted placement of fill in wetlands, change in intensity of use from a vacant lot to a residence, removal of vegetation, installation of a fence, port-a-potty, culvert, and recreational vehicles at 110 Martin Street, Crescent City, Pacific Shores subdivision Block 7, Lot 10, APN 107-071-17 in Del Norte County.

Dear Ms. Wilson:

I am in receipt of your letter dated July 30, 2003, responding to Commission staff's request dated July 18, 2003 that you notify us as to how you plan to resolve the above-mentioned alleged violation. As explained in the July 18, 2003 letter, you can resolve the violation in one of two ways: you can apply for a Coastal Development Permit (CDP) to remove the unpermitted development and restore the property to the condition it was in before the development occurred, or you can apply for a CDP to retain the unpermitted development. Jim Baskin, one of our staff planners located in our Eureka office will be able to explain to you in more detail what each of these application processes involve.

It is my understanding that you have not yet had the opportunity to discuss the permit process with Mr. Baskin, and as a result you may not fully understand the options available to you. I am therefore extending the initial September 1, 2003 deadline, until February 2, 2004. You must inform me no later than **February 2, 2004** as to how you plan to resolve the alleged violation. Furthermore, you must submit to this office, no later than **March 1, 2004**, a completed CDP application either to retain the unpermitted development, or to remove the unpermitted development and restore the property to the condition it was in before the development occurred. Failure to meet these deadlines could result in formal enforcement action against you.

If you have any questions about this letter, or your options going forward, please feel free to call me at 415-904-5220. Your questions concerning the permit application process can be directed to Mr. Baskin at (707) 445-7833.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Segar", written over a horizontal line.

Dan Segar  
Enforcement Staff, Statewide Enforcement Office

cc: Bob Merrill, North Coast District Manager  
Nancy Cave, Statewide Enforcement Program Supervisor  
Jim Baskin, North Coast Permit Analyst

Exhibit 5  
CCC-06-CD-08  
(Wilson)

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



**Via Certified and Regular Mail**  
(7001 2510 0009 2099 7477)

July 9, 2004

Janice Wilson  
P.O. Box 356  
Fort Dick, CA 95538

**Re: Coastal Act Violation File No. V-1-03-009;** Alleged unpermitted placement of fill in wetlands, change in intensity of use from a vacant lot to a residence, removal of vegetation, installation of a fence, port-a-potty, culvert and recreational vehicles at 110 Martin Street, Crescent City (Pacific Shores subdivision Block 7, Lot 10, APN 107-071-17), Del Norte County

Dear Ms. Wilson,

On July 18, 2003, the California Coastal Commission sent you a letter detailing an alleged violation of the California Coastal Act's permit requirements located on your property, in the Pacific Shores subdivision at 110 Martin Street (Block 90, Lot 4, APN 108-320-08) in Del Norte County. The letter requested that you: a) inform us of how you intend to resolve this violation no later than August 1, 2003, and b) submit a completed Coastal Development Permit ("CDP") application no later than September 1, 2003.

You responded to us in a letter dated July 30, 2003, stating that you would require additional time to consult legal counsel regarding any further response<sup>1</sup>. Coastal Commission staff sent you an additional letter, dated December 18, 2003, which acknowledged your 30 July 2003 letter, reiterated the various options you have available for resolving the violation, and set a new deadline of February 2, 2004 to contact us regarding resolution of the violation. Our 18 December 2003 letter also set a new deadline of March 1, 2004 for your submittal of a CDP application either to retain the unpermitted development or to remove it and restore the property. United States Postal records indicate that you received our 18 December 2003 letter on December 23, 2003, but to date you have not satisfactorily responded to our letter and its deadlines for action on your part.

The unpermitted development on your property consists of: 1) the placement of fill in wetlands; 2) changing the intensity of use of a vacant lot to residential use; 3) vegetation removal; 4) installation of a fence, port-a-potty, culvert and permanent placement of recreational vehicles. As outlined in both of our previous letters, you have two options for resolution of this Coastal Act violation. You can: 1) submit a CDP application to remove the unpermitted development and restore the affected property; or 2) submit a CDP application for after-the-fact CDP authorization to retain the unpermitted development. In our letter of July 18, 2003 and in the

<sup>1</sup> Your response letter confirms that you received our first certified mail letter. United States Postal Records confirm your receipt of that letter on July 24, 2003.

July 9, 2004

Page 2 of 2

"Pacific Shores California Water District" letter enclosed with it, we said that option 2 above, application to retain the cited unpermitted development, would require the submittal of additional resource studies because of the numerous resource issues identified within the Pacific Shores subdivision.

We hope that you will decide to resolve the violation voluntarily. However, should we fail to reach an administrative resolution of this matter, and if "the Commission finds, based on substantial evidence, a violation has occurred," Sections 30812 and, in particular, subsection 30812(d) of the Coastal Act authorizes the Commission to record a Notice of Violation on your property.

Pursuant to Section 30812, if you fail to respond by **July 23, 2004**, we will send you notice of the Executive Director's intent to record a Notice of Violation with the County Recorder's Office. Upon receipt of this notice, you will have twenty (20) days to inform the Executive Director of any objection you might have to the recordation of the Notice, and your desire to have the Commission conduct a public hearing before recording such a Notice.

If you do not object within twenty days, the Notice of Violation will be recorded on your property. However, if you object to the Notice of Violation being recorded, you would be entitled to a public hearing at a Commission hearing. If at that public hearing the Commission finds that a violation exists, the Executive Director will cause the Notice to be recorded. If the Commission finds that no violation has occurred, the Executive Director of the Commission will mail you notice of that finding. Should a Notice of Violation be recorded on your property, it may be "extinguished" or removed by the Commission once you resolve the violation, as defined in our previous correspondence and in this letter.

It is my understanding that you still have not contacted Commission staff to discuss your permitting options. Contact me no later than **July 23, 2004** so that we might discuss the appropriate solution to your Coastal Act violation. In your last letter dated July 30, you mentioned that you might want to consult with legal counsel prior to any further response. If you wish to have your legal counsel contact us on your behalf, you must first submit a letter to us authorizing that person to act on your behalf to discuss this violation and its resolution. You can also contact Bob Merrill of our North Coast office at (707) 445-7833 to discuss any concerns you may have about the permitting process.

If you have any questions about this letter or this enforcement action, please do not hesitate to contact me at the letterhead above, or at (415) 904-5290.

Sincerely,



Nancy L. Cave  
Northern California Supervisor  
Enforcement Program

Cc: Bob Merrill, North Coast District Manager  
Amrita Narasimhan, Enforcement staff

Regular <sup>Copy of orig</sup> mail  
Today's Date 7-16-04

attention:

California Coastal Commission  
regarding letter Dated July 9th 2004  
I've been informed that you  
are unconstitutional with no  
power or authority over me  
or my property.

Thank you,

Janice R Wilson

~~Janice R Wilson~~

Sending Regular mail 7-16-04  
PLUS Notorized Letter 7-16-04  
JRW.

## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200



July 21, 2004

Janice Wilson  
P.O. Box 356  
Fort Dick, CA 95538

Re: Coastal Act Violation File No. V-1-009 (Pacific Shores Subdivision, Block 7, Lot 10, APN 107-071-17), Del Norte County

Dear Ms. Wilson:

I received a copy of your letter dated July 16, 2004, concerning the above-referenced matter. In your letter, you assert that the Coastal Commission is "unconstitutional with no power or authority over me or my property." This is incorrect. Although litigation challenging the constitutionality of the method for appointing Commission members is pending, there has not been a final decision and the courts have not taken any action that prevents the Coastal Commission from enforcing the permit requirements of the Coastal Act at this time.

The pending litigation is Marine Forests Society, et al. v. California Coastal Commission, et al.; California Superior Court, Sacramento County, Case No. 00AS00567; Court of Appeal Case No. C038753; Supreme Court Case No. S113466. In April 2001, the trial court held that, because the Commission is effectively a legislative agency, the method of appointing Commissioners used at the time violated Article III, section 3 of the California Constitution. However, the order explicitly stays the enforcement of the order pending completion of all appellate review. That appellate review has not yet been completed. The Court of Appeal issued a decision upholding the trial court, and the decision is being reviewed by the California Supreme Court. The Supreme Court has not yet issued its decision in the case, and therefore, the trial court order finding that the Commission appointment method was unconstitutional is still stayed. Furthermore, the state legislature amended the law to modify the method of appointing Coastal Commission members, to eliminate the constitutional defect found by the Court of Appeal.

Therefore, the Coastal Commission may appropriately take all actions authorized under the Coastal Act, including issuing coastal development permits to authorize development in the coastal zone, and issuing administrative orders to address violations of the Coastal Act. Accordingly, we request that you again review the letter we sent you dated July 9, 2004 regarding the Coastal Act violation on your property, and contact us if you wish to discuss actions you may take to resolve this matter.



July 21, 2004  
Page 2

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Goldberg".

SANDRA GOLDBERG  
Staff Counsel

cc: Nancy Cave  
Bob Merrill  
Sheila Ryan

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



**Via Regular and Certified Mail**  
(7003 1010 0005 0457 5509)

August 23, 2004

Janice Wilson  
P.O. Box 356  
Ford Dick, CA 95538

**Re:** Coastal Act Violation File #V-1-03-009 (Alleged unpermitted placement of fill in wetlands, change in intensity of use from a vacant lot to a residence, removal of vegetation, and installation of a fence, port-a-potty, culvert and recreational vehicles) and conversation on August 20, 2004

**Property Location:** 110 Martin Street, Crescent City (Pacific Shores subdivision Block 7 Lot 10, APN 107-071-17), Del Norte County

Dear Ms. Wilson,

This letter confirms our phone conversation of August 20, 2004, in which you stated that all contact with you, from us, regarding the above-mentioned violation should be in writing, as you are getting legal assistance from an attorney.

I would like to take this opportunity to also discuss the violation itself and our previous communications with you. Commission staff first sent you notice of this violation in a letter dated July 18, 2003, explaining all the details associated with the violation, what would be required in order to resolve it administratively, and what remedies the Commission has available, should we not be able to come to an administrative resolution. This letter also stated that you should inform us by **August 1, 2003** about *how you plan to resolve the violation, and that you submit a Coastal Development Permit ("CDP") application no later than September 1, 2003*. United States Postal Service records indicate that you received this letter on July 24, 2004, and you replied in a letter dated **July 30, 2003**. In this letter, you stated that you would require additional time in order to consult with legal counsel. Though your response was not what we had required in order to resolve this violation (you had neither informed us of how you planned to resolve the violation nor submitted a CDP application), Commission staff gave you additional time.

As five months had passed since the original letter sent to you, Commission staff once again requested, in a letter dated December 18, 2003, that you inform us about how you planned to resolve the violation (extending the deadline to **February 2, 2004**), and that you submit a CDP application no later than **March 1, 2004**. United States Postal Service records indicate that you received this letter as well, on December 23, 2003, but did not respond and did not submit a CDP application.

August 23, 2004

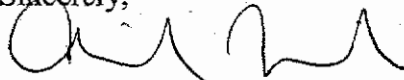
Page 2 of 2

In a letter dated July 9, 2004, Commission staff once again notified you of your delay in action, the violation, what would be required to resolve it, and the various remedies the Commission has available, including the recordation of a Notice of Violation on your property. This letter extended the deadline to **July 23, 2004** for you to contact us to discuss *how you would be willing to resolve this violation*. You responded via a letter dated July 16, 2004, in which you stated that you had been informed that the Commission is unconstitutional, and that it had no authority in this matter<sup>1</sup>. This information is inaccurate, and the response was not what we had required of you to resolve the violation (we had once again asked you to inform us as to how you were going to resolve the violation). Sandra Goldberg, Commission Staff Counsel, responded to you in a letter dated July 21, 2004, which discussed in detail why the Commission is not currently unconstitutional and still continues to retain authority in the coastal zone. I have enclosed a copy of her letter for your convenience, in case you may not have received it. To date, we have not gotten any response from you regarding the July 21, 2004 letter, any proper response that indicates how you would be willing to resolve the violation, or any application for a CDP.

We do understand that you want to continue to discuss this with legal counsel; however, we, as you can see, have given you ample time to consult with legal counsel, and have extended the deadline for you several times. At this point, we cannot continue to delay any longer. In order to resolve this violation administratively, since you have had ample time to discuss this with your legal counsel and to gather information, please submit to me either a CDP application to retain the development or a CDP application to remove the development by no later than **September 6, 2004**. Should you miss this deadline, we will send you notice of the Executive Director's intent to record a Notice of Violation on your property, as described in our letter to you dated July 9, 2004. Should you feel it necessary for legal counsel or another agent to represent you in submitting the application, or for any other matter, you must first submit a letter to us authorizing them to discuss the violation and to work on resolving the violation with us.

Please do not hesitate to contact me if you have any questions regarding this letter or the violation. You may contact me either at the address on the above letterhead or call me at the Commission's San Francisco Office at (415) 904-5220. I look forward to resolving this matter with you.

Sincerely,



Amrita Narasimhan  
Enforcement Staff

cc: Nancy Cave, Northern California Supervisor, Enforcement Program  
Bob Merrill, North Coast District Manager  
Ernie Perry, Community Development Director, Del Norte County

Enclosure: Letter dated July 21, 2004 from Sandra Goldberg, Staff Counsel

<sup>1</sup> Though no United States Postal Service records were found for this letter, your response indicates that you did, in fact, receive the letter.

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885

Via Certified and Regular Mail

June 21, 2006

Janice Wilson  
P.O. Box 356  
Fort Dick, CA 95538

**Subject:** Notice of Intent to Record Notice of Violation and Commence  
Cease and Desist Order and Restoration Order Proceedings

**Violation No.:** V-1-03-009

**Location:** Block 7, Lot 10, Pacific Shores, Del Norte County; APN 107-071-17

**Violation Description:** Unpermitted placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence.

Dear Ms. Wilson:

The purpose of this letter is to notify you of my intent, as Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation ("NOVA") against your property for unpermitted development, and to commence proceedings for issuance of a Cease and Desist Order and Restoration Order for unpermitted development. The unpermitted development includes placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence. This unpermitted development is located on property you own at Block 7, Lot 10, Pacific Shores, Del

Norte County, APN 107-071-17 ("subject property"). The subject property contains and is adjacent to environmentally sensitive habitat.

Development is defined, for purposes of the Coastal Act,<sup>1</sup> in Section 30106 of the Coastal Act as follows:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... (emphasis added)*

The placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence that has occurred on the subject property each constitutes development under the Coastal Act, and as such, all are subject to Coastal Act requirements. Primarily, they are subject to the requirement in Section 30600(a), which requires that anyone performing such non-exempt development within the Coastal Zone obtain a Coastal Development Permit ("CDP"). These activities all occurred without the benefits of CDPs, which means they are violations of the Coastal Act.

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the unpermitted development activities that have occurred at the subject property. The purpose of the NOVA is to warn prospective buyers about the Coastal Act violations on the subject property. Collectively, the Cease and Desist Order and Restoration Order will direct you to cease and desist from performing or maintaining any unpermitted development, will require the removal of unpermitted development, and will order any necessary restoration of the areas impacted by the unpermitted development to return it to its pre-violation condition. The NOVA, Cease and Desist Order and Restoration Order are discussed in more detail in the following sections of this letter.

In a letter dated July 18, 2003, the Coastal Commission sent you a notice of violation regarding the unpermitted development on the subject property, which you own. You responded in a letter dated July 30, 2003 and indicated that you intended to consult with legal counsel and a property owner's association before responding further. In letters dated December 18, 2003 and July 9, 2004, the Coastal Commission sent you two additional notices of violation regarding the unpermitted development on the subject property. You responded in a letter dated July 16, 2004,

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<sup>1</sup> The Coastal Act is codified in Section 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

in which you asserted that the Coastal Commission was unconstitutional with no power over you or your property. The Commission's legal staff responded in a letter dated July 21, 2004, and explained that the litigation challenging the constitutionality of the method of appointing Commission members was pending, but that no action had been taken, judicial or otherwise, that prevented the Coastal Commission from enforcing the permit requirements of the Coastal Act. On June 23, 2005, the California Supreme Court held that the current provisions of the Coastal Act regarding the appointment of commissioners and the terms of office of commissioners are constitutional.

In a letter dated August 23, 2004, the Coastal Commission sent you a fourth notice of violation letter regarding the unpermitted development on the subject property, which remains unresolved. You responded in a letter dated September 2, 2004, and referred to an August 20, 2004 telephone conversation with enforcement staff, during which you requested that all contact with you regarding the violation be in writing and, in which you stated that you were seeking legal assistance. We have received no further communication from you regarding the Coastal Act violations on the subject property, and the violations remain unresolved.

#### Notice of Violation

The Commission's authority to record a Notice of Violation against your property is set forth in Section 30812 of the Coastal Act, which states the following:

*Whenever the Executive Director of the Commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the Executive Director may cause a notification of intention to record a Notice of Violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.*

I am issuing this Notice of Intent to record a Notice of Violation because development has occurred in violation of the Coastal Act on the subject property. If you object to the recordation of a Notice of Violation against your property in this matter and wish to present evidence to the Commission at a public hearing on the issue of whether a violation has occurred, you must respond, in writing, within 20 days of the postmarked mailing of this notification. If, within 20 days of mailing of the notification, you fail to inform Commission staff in writing of an objection to recording a Notice of Violation, I shall record the Notice of Violation in the Del Norte County Recorder's Office as provided for under Section 30812 of the Coastal Act.

If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, **you must do so in writing, to the attention of Sheila Ryan in the Coastal Commission's San Francisco office, no later than July 11, 2006.** Please include the evidence you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider.

### **Cease and Desist Order**

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states, in part, the following:

*(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.*

As the Executive Director of the Commission, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings because unpermitted development has occurred at the subject property. This unpermitted development includes placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence. The Cease and Desist Order would order you to desist from maintaining unpermitted development and from performing any further unpermitted development on your property.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may also be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material. Staff will recommend that the Cease and Desist Order include terms requiring such removal and requiring additional site investigations to ensure removal of all unpermitted development on the subject property, with a schedule for removing the unpermitted development.

### **Restoration Order**

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

*In addition to any other authority to order restoration, the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.*

Commission staff has determined that the specified activity meets the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development consisting of placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal,

installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence has occurred on the subject property.

- 2) This development is inconsistent with the resource protection policies of the Coastal Act. The subject property is adjacent to (and may contain some) biologically significant wetlands. The project may involve fill of wetland (see Section 30233), but even if it does not, the unpermitted development constitutes a significant disruption and negative impact to the quality of environmentally sensitive wetland habitat (see Section 30240), as well as to the quality of coastal waters contained in nearby Lakes Earl and Tolowa (see Sections 30230 and 30231). The unpermitted placement of vehicles and structures has resulted in major vegetation removal and disturbance to the natural habitat (see Sections 30240(a) and (b)). The unpermitted development has also not been placed "within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or...in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources," as is required by Section 30250(a) of the Coastal Act.
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. Cal. Code Regs., Title 14 § 13190. The unpermitted development has impacted environmentally sensitive habitat. Such impacts meet the definition of damage provided in Section 13190(b) of those regulations: "*any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development*". The unpermitted development includes placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence. The unpermitted development continues to be present and persists at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Cease and Desist and Restoration Order proceeding before the Commission in order to restore the subject property to the condition it was in before the unpermitted development occurred. Restoration will require removal of all unpermitted development on the subject property and may include other actions required to restore the subject property to its prior condition.

The procedures for the issuance of Cease and Desist and Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. See Title 14 of the California Code of Regulations. Section 13196(e) of the Commission's regulations states the following:

*Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred*



Accordingly, any Restoration Order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described above.

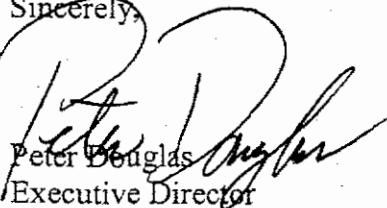
### Additional Procedures

Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties, respectively, in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000 per violation. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 per violation for each day in which each violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Sheila Ryan, no later than July 11, 2006.**

The Commission staff is tentatively scheduling the hearing for the NOVA, Cease and Desist Order and Restoration Order during the Commission meeting that is scheduled for the week of August 9-11, 2006 in San Pedro, CA. If you have any questions regarding this letter or the enforcement case, please contact Sheila Ryan at 415-597-5894, or send correspondence to her attention at the San Francisco address listed on the letterhead. We look forward to hearing from you and appreciate your anticipated cooperation.

Sincerely,

  
Peter Douglas  
Executive Director

cc without encl: Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Nancy Cave, Northern California Enforcement Super

Encl: Statement of Defense form for Cease and Desist Order

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
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Postage	\$ .87
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Total Postage & Fees	\$ 5.12
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Street, Apt. No., or PO Box No.	
City, State, ZIP+	
PS Form 3800, 1-05	

Exhibit 10  
CCC-06-CD-08  
(Wilson) Page 6 of 9

Postmark  
Here  
JUN 27 2006  
SAN FRANCISCO, CA  
R. Ryan

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order and restoration order issued by the Executive Director or a notice of intent to initiate cease and desist order and restoration order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation that (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and **return it no later than July 11, 2006** to the Commission's enforcement staff at the following address:

Sheila Ryan  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

If you have any questions, please contact Sheila Ryan at 415-597-5894.

1. **Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in the notice of intent):**

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2. **Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in the notice of intent):**

3. **Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in the notice of intent):**

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

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5. Any other information, statement, etc. that you want to offer or make:

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6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

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## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885

Via Hand Delivery and Certified and Regular Mail

September 7, 2006

Janice Wilson  
P.O. Box 356  
Fort Dick, CA 95538

Subject: **Notice of Intent to Record Notice of Violation and Commence Cease and Desist Order and Restoration Order Proceedings**

Violation No.: V-1-03-009

Location: Block 7, Lot 10, Pacific Shores, Del Norte County; APN 107-071-17

Violation Description: Unpermitted placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence.

Dear Ms. Wilson:

The purpose of this letter is to notify you of my intent, as Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order and Restoration Order for unpermitted development. The unpermitted development includes placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence. This unpermitted development is located on property you own at Block 7, Lot 10, Pacific Shores, Del Norte County, APN 107-071-17 ("subject property"). The subject property contains and is adjacent to environmentally sensitive habitat.

Development is defined, for purposes of the Coastal Act,<sup>1</sup> in Section 30106 of the Coastal Act as follows:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any*

<sup>1</sup> The Coastal Act is codified in Section 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

*materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations...* (emphasis added)

The placement of fill (in this case, in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence that has occurred on the subject property each constitutes development under the Coastal Act, and as such, all are subject to Coastal Act requirements. Primarily, they are subject to the requirement in Section 30600(a), which requires that anyone performing such non-exempt development within the Coastal Zone obtain a Coastal Development Permit ("CDP"). These activities all occurred without the benefits of CDPs, which means they are violations of the Coastal Act.

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the unpermitted development activities that have occurred at the subject property. Collectively, the Cease and Desist Order and Restoration Order will direct you to cease and desist from performing or maintaining any unpermitted development, will require the removal of unpermitted development, and will order any necessary restoration of the areas impacted by the unpermitted development to return it to its pre-violation condition. The Cease and Desist Order and Restoration Order are discussed in more detail in the following sections of this letter.

In a letter dated July 18, 2003, the Coastal Commission sent you a notice of violation regarding the unpermitted development on the subject property, which you own. You responded in a letter dated July 30, 2003 and indicated that you intended to consult with legal counsel and a property owner's association before responding further. In letters dated December 18, 2003 and July 9, 2004, the Coastal Commission sent you two additional notices of violation regarding the unpermitted development on the subject property. You responded in a letter dated July 16, 2004, in which you asserted that the Coastal Commission was unconstitutional with no power over you or your property. The Commission's legal staff responded in a letter dated July 21, 2004, and explained that the litigation challenging the constitutionality of the method of appointing Commission members was pending, but that no action had been taken, judicial or otherwise, that prevented the Coastal Commission from enforcing the permit requirements of the Coastal Act. On June 23, 2005, the California Supreme Court held that the current provisions of the Coastal Act regarding the appointment of commissioners and the terms of office of commissioners are constitutional.

In a letter dated August 23, 2004, the Coastal Commission sent you a fourth notice of violation letter regarding the unpermitted development on the subject property, which remains unresolved. You responded in a letter dated September 2, 2004, and referred to an August 20, 2004 telephone conversation with enforcement staff, during which you requested that all contact with you

regarding the violation be in writing and, in which you stated that you were seeking legal assistance. We have received no further communication from you regarding the Coastal Act violations on the subject property, and the violations remain unresolved.

### **Cease and Desist Order**

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states, in part, the following:

*(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.*

As the Executive Director of the Commission, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings because unpermitted development has occurred at the subject property. This unpermitted development includes placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence. The Cease and Desist Order would order you to desist from maintaining unpermitted development and from performing any further unpermitted development on your property.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may also be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material. Staff will recommend that the Cease and Desist Order include terms requiring such removal and requiring additional site investigations to ensure removal of all unpermitted development on the subject property, with a schedule for removing the unpermitted development.

### **Restoration Order**

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

*In addition to any other authority to order restoration, the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.*

Commission staff has determined that the specified activity meets the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development consisting of placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence has occurred on the subject property.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act. The subject property is adjacent to (and may contain some) biologically significant wetlands. The project may involve fill of wetland (see Section 30233), but even if it does not, the unpermitted development constitutes a significant disruption and negative impact to the quality of environmentally sensitive wetland habitat (see Section 30240), as well as to the quality of coastal waters contained in nearby Lakes Earl and Tolowa (see Sections 30230 and 30231). The unpermitted placement of vehicles and structures has resulted in major vegetation removal and disturbance to the natural habitat (see Sections 30240(a) and (b)). The unpermitted development has also not been placed "within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or...in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources," as is required by Section 30250(a) of the Coastal Act.
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. Cal. Code Regs., Title 14 § 13190. The unpermitted development has impacted environmentally sensitive habitat. Such impacts meet the definition of damage provided in Section 13190(b) of those regulations: "*any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development*". The unpermitted development includes placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence. The unpermitted development continues to be present and persists at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Cease and Desist and Restoration Order proceeding before the Commission in order to restore the subject property to the condition it was in before the unpermitted development occurred. Restoration will require removal of all unpermitted development on the subject property and may include other actions required to restore the subject property to its prior condition.

The procedures for the issuance of Cease and Desist and Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. See Title 14 of the California Code of Regulations. Section 13196(e) of the Commission's regulations states the following:

*Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred*



Accordingly, any Restoration Order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described above.

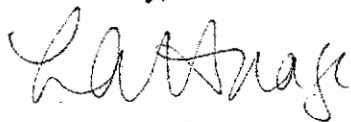
### Additional Procedures

Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties, respectively, in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000 per violation. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 per violation for each day in which each violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Sheila Ryan, no later than September 29, 2006.**

The Commission staff is tentatively scheduling the hearing for the NOVA, Cease and Desist Order and Restoration Order during the Commission meeting that is scheduled for the week of November 15-17, 2006 in San Diego, CA. If you have any questions regarding this letter or the enforcement case, please contact Sheila Ryan at 415-597-5894, or send correspondence to her attention at the San Francisco address listed on the letterhead. We look forward to hearing from you and appreciate your anticipated cooperation.

Sincerely,



Peter Douglas  
Executive Director

cc without encl: Lisa Haage, Chief  
Alex Helperin, Sta  
Nancy Cave, North

Encl: Statement of Defense

#### SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Janice Wilson  
P.O. Box 356  
Fort Dick, CA  
95538

2. Article Number  
(Transfer from service label)

7005 3110 0002 6240 1165

#### COMPLETE THIS SECTION ON DELIVERY

A. Signature



☐ Agent  
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

Exhibit 11  
CCC-06-CD-08  
(Wilson) Page 5 of 8

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order and restoration order issued by the Executive Director or a notice of intent to initiate cease and desist order and restoration order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation that (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and **return it no later than September 29, 2006** to the Commission's enforcement staff at the following address:

Sheila Ryan  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

If you have any questions, please contact Sheila Ryan at 415-597-5894.

1. **Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in the notice of intent):**

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2. Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in the notice of intent):

3. Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in the notice of intent):

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

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5. Any other information, statement, etc. that you want to offer or make:

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6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

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The People of  
Att. California Coastal  
Commission

No I could not Respond  
to 9-8-06 informant  
Letter by 9-26-06  
and Certainly with no Legal  
Assistance.

No I Can not go  
Financially or Other wise  
1200 mile away to San Diego  
For the 11-15-17-06 hearing

It is a FACT I  
Am A Citizen of The  
United States of America  
Not through Illegalitys  
and you WILL Refine  
and Cartiously allow  
me to be protected  
under the Constitution  
of the United States  
of America. For which

I Stand Proud to be  
humbly So ~~By~~ Janice R. Wilson  
Response Comments P.O. Box 356  
\* OR Richard C. Braders RB Fort Dick Ca 95538

Sent Through Regular mail  
via Friend b/cor 9-21-06  
Bison

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885



Via Certified and Regular Mail

September 29, 2006

Janice Wilson  
P.O. Box 356  
Fort Dick, CA 95538

**Subject:** Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings; your letter dated 9/21/06

**Violation No.:** V-1-03-009

**Location:** Block 7, Lot 10, Pacific Shores, Del Norte County; APN 107-071-17

**Violation Description:** Unpermitted placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence.

Dear Ms. Wilson:

I am in receipt of your letter dated September 21, 2006, in which you respond to the Commission's September 7, 2006 Notice of Intent ("NOI") letter regarding the above-referenced Coastal Act violation on your property. You state that you cannot respond to the Commission's enforcement letter, in part because you have no legal assistance. Staff notes that you have previously stated (in an August 2004 conversation with staff and in a letter to staff dated September 2, 2004) that you were seeking to obtain legal assistance. The fact that 2 years have elapsed and you still do not have legal assistance is not an acceptable reason to further delay resolution of this long-standing Coastal Act violation.

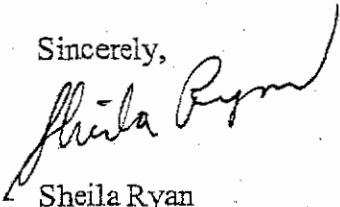
You state that you are financially unable to attend a hearing in San Diego, California, but you have not requested a postponement of the hearing to a date when the hearing will be held closer to where you live in Del Norte County. Staff notes that you did not respond at all to the Commission's June 21, 2006 NOI regarding this matter. If you had responded to this NOI and

requested a postponement, staff would have been able to reschedule this matter for the one Commission hearing that is held annually in Eureka (usually every September). Because of the large volume of Coastal Act violation cases, and because the Commission hearing moves to different locations in the state every month, staff cannot always schedule hearings in the location that is most convenient to the alleged violator.

If you wish to request a postponement of this matter from the November San Diego hearing to a location that is closer to Del Norte County, staff would consider scheduling this matter for the December hearing, which will be held in San Francisco during the week of December 13-15, 2006. **Please contact me in writing or by telephone at 415-597-5894 no later than Friday, October 13, if you wish to request a postponement to the December hearing.** If we do not hear from you by this date we will proceed with the hearing for the proposed enforcement Orders at the November Commission hearing in San Diego.

Thank you for your attention to this matter. We look forward to hearing from you and appreciate your anticipated cooperation.

Sincerely,

  
Sheila Ryan  
Headquarters Enforcement Officer

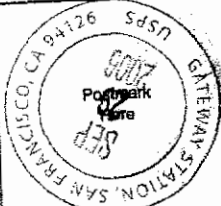
cc: Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Nancy Cave, Northern California Enforcement Supervisor

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Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.64



Ryan

Sent To	Janice Wilson		
Street, Apt. No., or PO Box No.	P.O. Box 356		
City, State, ZIP+4	Fort Dick CA 95538		

PS Form 3800, June 2002 See Reverse for Instructions

**THE SMITH FIRM**

ATTORNEYS  
1541 CORPORATE WAY, SUITE 100  
SACRAMENTO, CA 95831  
(916) 442-2019  
WWW.THESMITHFIRM.COM

**RECEIVED**

NOV 01 2006

CALIFORNIA  
COASTAL COMMISSION**FAX TRANSMISSION**

(May contain confidential or privileged attorney-client information. If you are not the intended recipient, do not disseminate this fax. Call the above number for instructions.)

**DATE:** Wednesday, November 01, 2006

**TO:** SHEILA RYAN, (415) 904-5235

**FROM:** Kelly T. Smith

**PAGES:** 2 w/ cover

**RE:** Commission agenda Nov. 15; Janice Wilson; request to postpone

Please find letter of today attached.



# THE SMITH FIRM

ATTORNEYS  
1541 CORPORATE WAY, SUITE 100  
SACRAMENTO, CA 95831  
(916) 442-2019  
WWW.THESMITHFIRM.COM

November 1, 2006

## BY FAX ONLY

Ms. Sheila Ryan  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

**RE:** Janice Wilson; Commission agenda Nov. 15 item; request to postpone

Dear Ms. Ryan:

As of today, I have been retained to represent Pacific Shores resident Janice Wilson before the Coastal Commission. Ms. Wilson wishes to oppose the proposed cease and desist order, however we request a postponement of the matter until I can prepare her defense. She also would like to be able to attend the hearing, which would be possible if it is not held in Southern California, as the November 15 hearing is currently set.

In evaluating its decision to postpone the hearing, the Commission should be aware that Ms. Wilson is on disability, with a mental disability. From my conversation with her, it is not at all clear that she understands the nature of the notices she has been given. Furthermore, her disability and financial limitations restrict her travel abilities.

Thank you for your consideration of this request.

Sincerely,

  
KELLY T. SMITH

cc: Client

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885

Via Telecopy and Certified and Regular Mail

November 2, 2006

Kelly T. Smith  
1541 Corporate Way, Suite 100  
Sacramento, CA 95831

Subject: **Postponement request**

Violation No.: V-1-03-009

Location: Block 7, Lot 10, Pacific Shores, Del Norte County; APN 107-071-17

Violation Description: Unpermitted placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, installation of a culvert, (long term) placement of recreational vehicles and a portable toilet, and construction of a fence.

Dear Mr. Smith:

Thank you for speaking with me yesterday about the above-referenced case. I understand that you have just been formally retained by Janice Wilson regarding this matter. I am in receipt of your letter dated November 1, 2006, in which you request a postponement of the enforcement proceedings that have been scheduled for November 15.

As we discussed yesterday, there are no rights of postponement for enforcement matters under the Coastal Act and the Commission is under no obligation to grant a postponement of this matter. The deadline for submittal of a Statement of Defense under the applicable regulations has long since expired. We understand, however, that you are new to the case and that you have requested additional time to familiarize yourself with the case on Ms. Wilson's behalf. We also appreciate your statements about Ms. Wilson wanting to be able to attend a hearing closer to Del Norte County. This is one reason why staff previously offered Ms. Wilson a possible

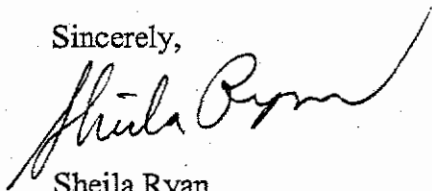
postponement to the December Commission hearing that will be held in San Francisco, which is the closest hearing to Del Norte County until sometime next year. I note again that she did not accept our offer, nor respond in any way to our letter.

Despite this, as a courtesy, we hereby grant a postponement of this matter until the December hearing that is scheduled for the week of December 13-15 in San Francisco. Although we are under no obligation to do so, as a professional courtesy we are also willing to accept defense materials from you as soon as you can submit them to us and **no later than Monday, November 13, 2006.**

During our conversation, you expressed concerns about reviewing the complete record and I responded that the staff report and its exhibits, which you indicated you had downloaded from the Commission's website, constituted the bulk of the record for this matter. I have construed your statements as a public records act request and have examined the cease and desist order file for this matter. Three additional documents, which are referenced in the staff report but not included as exhibits, together with the staff report and its attached exhibits, constitute all of the public documents in the Commission's files for this matter. For your convenience I have copied those additional documents for you and include them as enclosures to this letter.

Thank you for your attention to this matter. Please do not hesitate to call me at 415-597-5894 if you have any questions about this letter or the enforcement process.

Sincerely,



Sheila Ryan  
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Nancy Cave, Northern California Enforcement Supervisor

Encl: Letter dated September 2, 2004 from Ms. Wilson to Commission staff  
Letter and attachments dated July 12, 2006 from Commission staff to Del Norte County Recorder's office  
Email and photo attachment dated September 11, 2006 from Del Norte County staff to Commission staff

**THE SMITH FIRM**

ATTORNEYS

1541 CORPORATE WAY, SUITE 100

SACRAMENTO, CA 95831

(916) 442-2019

WWW.THESMITHFIRM.COM

**RECEIVED**  
NOV 13 2006  
CALIFORNIA  
COASTAL COMMISSION**FAX TRANSMISSION**

(May contain confidential or privileged attorney-client information. If you are not the intended recipient, do not disseminate this fax. Call the above number for instructions.)

**DATE:** Monday, November 13, 2006

**TO:** Sheila Ryan, Coastal Commission, Fax (415) 904-5400

**FROM:** Kelly T. Smith

**PAGES:** 12 w/ cover

**RE:** Janice Wilson cease and desist order; statement of defense

Ms. Ryan: Please find the statement of defense for Janice Wilson attached. Also, I have filed a petition and complaint in Sacramento County Superior Court seeking to void the Dan Wettengel order. I can send a copy to you (I haven't served the Commission yet) if you give me your email again. Thanks.

Kelly T. Smith 196821  
THE SMITH FIRM  
1541 Corporate Way, Suite 100  
Sacramento, CA 95831  
Telephone: (916) 442-2019  
Facsimile: (916) 442-0220

Attorney for Respondent  
JANICE WILSON

**BEFORE THE CALIFORNIA COASTAL COMMISSION**

JANICE WILSON, an individual,

Respondent,

vs.

CALIFORNIA COASTAL COMMISSION,  
a California state agency,

Agency.

Proposed cease-and-desist order CCC-06-CD-08

**STATEMENT OF DEFENSE**

[CCP §]

Hearing:

Date: December \_\_, 2006

Time: TBD

Location: San Francisco

**I. SUMMARY**

Janice Wilson, a resident of Pacific Shores subdivision in Del Norte County, opposes the issuance of cease-and-desist order CCC-06-CD-08 against her by the California Coastal Commission.

The proposed order is without substantial evidence of the alleged violations. Furthermore, the actions of the California Coastal Commission, its director and commissioners, would constitute a taking under the Fifth Amendment of the U.S. Constitution. Enforcement of the cease-and-desist order would deprive Ms. Wilson of her only housing by eliminating entirely her right to live on the property, or continue to so restrict her use as to deprive her of her property.

The action against Ms. Wilson is part of a concerted, unauthorized program of the Commission, its director and commissioners, to drive all residents of Pacific Shores from their habitation, actions which

1 have included, and continue to include, intentional flooding of their properties, a predetermined program  
2 to deny any permits for the use of their property by Pacific Shores property owners and refusal to allow  
3 or provide basic health and safety services provided to similarly-situated citizens.

4 Furthermore the cease-and-desist order violates the California Environmental Quality Act (CEQA)  
5 in that it constitutes an incremental project, which has the potential of significant environmental impacts  
6 as will be discussed below. Those impacts are required to be reviewed by an environmental impact  
7 report under CEQA before approval of the cease-and-desist order.

8 Ms. Wilson's position is that the cease-and-desist order is without substantial evidence, unlawful  
9 and unconstitutional, and that the Commission's conspiracy to remove the Pacific Shores subdivision, its  
10 residents, and all improvements thereupon and to convert the place to an uninhabited state is a violation  
11 of their civil rights, an unconstitutional taking and a violation of state and federal equal protection and  
12 due process protections.

## 14 II. BACKGROUND

15 The proposed cease-and-desist order would essentially find that Janice Wilson lives on her Pacific  
16 Shores property, "changing its use" from vacant land to residential, and discharging water and waste to  
17 the land there. The order would require that Ms. Wilson remove her home, a recreational vehicle, by a  
18 certain date or pay fines of up to \$6,000 per day of violation.

19 The administrative record before the Commission, according to its staff, is the staff report only.

20 The property of Ms. Wilson is in a residential subdivision approved by Del Norte County in 1963  
21 called Pacific Shores, located about five miles north of Crescent City and 11 miles south of the Oregon  
22 border. The subdivision lies adjacent to Lake Earl and Lake Talawa, which connect by a narrow channel  
23 and together comprise a 5,500-acre estuarine lagoon, slightly above the level of the nearby Pacific  
24 Ocean, from which it is separated only by a sand bar.

25 After the more than 1,500 largely half-acre lots of the subdivision were sold to private, individual  
26 parties, various infrastructure improvements were constructed throughout the subdivision, including  
27 surface water drainage, culverts, and streets. Most of the property owners promptly thereafter began to  
28 live on the property using recreational vehicles.

1 The California Coastal Act was passed after approval of a voter proposition in 1972, requiring local  
2 coastal plans to be adopted by all California counties with coastal lands, which included those of Pacific  
3 Shores. The County of Del Norte submitted a proposed plan in the late 1970s. However, the Commis-  
4 sion has refused to approve the County plan, thus arrogating control over most aspects of actual Pacific  
5 Shores land use management since that time.

6 The Commission in turn has delegated day-to-day management of lakes Earl and Talawa and the  
7 land around it, including Pacific Shores, to the California Department of Fish & Game.

8 Since its acquisition of control over Pacific Shores land use, the Commission has set a stated but  
9 informal agenda to acquire the private property title held by the owners of all Pacific Shores lots to be  
10 put in title of various surrogates, including the California Wildlife Conservancy, client non-profit  
11 environmental groups and other state agencies.

12 The Commission has sought to achieve this agenda through a variety of tactics, including purchase  
13 from willing sellers, but more forcefully through refusal to grant any permits to conduct any develop-  
14 ment whatsoever in Pacific Shores, to stymie any efforts to maintain or improve the infrastructure of the  
15 subdivision and by driving out residents with intentional flooding.

16 Numerous floods were recorded from Lake Earl, including major floods in 1861, 1890, 1927, 1950,  
17 1953 and 1955. In 1955, the Del Norte Flood Control District was formed, but large floods still occurred  
18 again in 1964, 1966 and 1971. The 1964 flood covered 9,300 acres and drowned 360 head of livestock.  
19 The level of the lakes reached eight feet during this flood.

20 There are numerous accounts of the Tolowas, the native Indian tribe living on and around lakes Earl  
21 and Talawa, breaching the lake at the sand bar to prevent flood levels and protect villages and burial  
22 grounds.

23 Since 1986, however, at the invitation of the Commission, the federal Army Corps of Engineers  
24 assumed flood management of the lakes. Subject to Commission approval and at its direction, all known  
25 permits issued by the Corps of Engineers to breach Lakes Earl and Talawa authorized breaching only at  
26 or above the eight-foot mean sea level (MSL), with the exception of allowing a breach to occur on  
27 February 15 if lake levels are above five-foot MSL. Thus the Pacific Shores subdivision, with drainage  
28 and improvements engineered at four-foot lake levels, is intentionally subjected to regular flooding.

1 Lake levels from 1988 through 1995 reach above eight feet MSL at least once annually. Lake level  
2 before a breach was performed during this time frame averaged 9.35 feet MSL. Lake levels rose above  
3 nine feet MSL five of eight years (62.5 percent of the time); lake levels rose above 10 feet MSL on two  
4 of eight years (25 percent).

5 The change in management of the Lakes, from the historical breaching at 4-6 feet MSL to the  
6 current breaching at greater than eight feet MSL occurred without any formal decision by the Coastal  
7 Commission, the Corps of Engineers or the Del Norte County Flood Control District, which performs all  
8 authorized breaches of the lakes.

9 As a consequence of the flooding, the lots within Pacific Shores are constantly subject to direct and  
10 indirect flooding, including Ms. Wilson's property. The surface and subsurface water impacts to Ms.  
11 Wilson's property and other Pacific Shores property include infiltration of unlined solid waste disposal  
12 which has caused pollution of soil and water.

13 These indisputable facts above are found supported in the records of the Commission, other public  
14 agencies and client environmental organizations. To them, Ms. Wilson would add the following, to  
15 which she would testify and could testify:

16 Ms. Wilson acquired her property from the previous owner. The previous owner maintained  
17 recreational vehicles on the property and owners have resided on the property since the formation of the  
18 subdivision. Ms. Wilson has never been cited for any violation of land use, or for any other violation  
19 related her presence on the property, by the County of Del Norte or any other agency.

20 Ms. Wilson inhabits the property in much the same manner as other Pacific Shores residents. There  
21 is no water service, electricity, sewer or septic—all have been *de facto* prohibited by the Coastal  
22 Commission's refusal to grant permits or planning for any further infrastructure or utilities. Ms. Wilson  
23 uses a portable latrine. It is maintained consistently. Waste water is stored in a tank and pumped out with  
24 the removal of the latrine wastes. Ms. Wilson discharges nothing into or onto the ground, soil or water  
25 of her property. Garbage is self-hauled to disposal. Electricity is supplied by a gas generator.

26 Ms. Wilson and other Pacific Shores residents protect the environment of Pacific Shores by assuring  
27 that non-residents do not "squat" on property there, as squatters often deal drugs or illegally dump.  
28



1 Ms. Wilson would apply to the Coastal Commission for a permit to construct a permanent structure  
2 on her property. But she believes on the basis of representations by Commission and other governmental  
3 representatives that her application would be denied. She has information that all other Pacific Shores  
4 property owners who have applied for permits to construct on their property have been denied approval  
5 by the Commission.

6 The refusal of the Commission to grant construction permits to Pacific Shores residents is an  
7 intentional policy and program intended to prevent any Pacific Shores habitation and to force the sale of  
8 the land, at reduced values, to state conservation agencies or Commission client non-profit groups.

9 The cease-and-desist order issued to Ms. Wilson is part of a deliberate and unlawful pattern and  
10 practice to force Ms. Wilson from her property or to assess fines which will drive the property into  
11 forfeiture.

### 13 III. STATEMENT OF LAW

14 PRC §30106 provides in its relevant portion as follows:

15 "Development" means, on land, in or under water, the placement or erection of any  
16 solid material or structure; discharge or disposal of any dredged material or of any gase-  
17 ous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction  
18 of any materials; change in the density or intensity of use of land..."

19 The definition then, requires a "solid material or structure" and a finding that the recreational  
20 vehicles and portable toilets are such. Such a finding is lacking in the staff report.

21 The Coastal Act provides that before its February of 1976 effective date, existing land use and  
22 structures were grandfathered. PRC §30608. *Monterey Sand Co. v. California Coastal Com.* (1987) 191  
23 Cal.App.3d 169. As noted in the staff report, the Pacific Shores subdivision was approved in 1963, more  
24 than 10 years before the effective date of the Act.

25 County of Del Norte ordinances pertaining to coastal zoning and restrictions were not passed until  
26 1984. As indicated in the staff report, the Del Norte County ordinances pertaining to recreational  
27 vehicles were all adopted after 1988. Nonconforming uses cannot be barred retroactively. *Jones v. Los*  
28 *Angeles* (1930) 211 C. 304. Thus the county ordinances would not apply to previous uses such as the  
recreational vehicles that had been located on Pacific Shores property on a permanent basis.

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1. *Janice Wilson owns the subject property, identified as Lot 10 in Block 7, APN 107-071-17, in the Pacific Shores Subdivision, north of Crescent City, Del Norte County.*

2. *Unpermitted development including installation of a culvert, placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, (long term) placement of recreational vehicles, sheds and a portable toilet, and construction of a fence, has occurred on the subject property.*

Response: Denied. No permit was required. The property was zoned residential before the enactment of the Coastal Act and culverts were in place before enactment. Recreational vehicles, fencing and a portable toilet have always been on the property, since before the enactment of the Coastal Act; the Commission has offered no substantial evidence to the contrary. There is no "shed" on the property. The Commission has provided no substantial evidence of actual "major vegetation" which has been removed. The Commission has provided no substantial evidence of a change of intensity of use since the enactment of the Coastal Act. The property was subdivided long before the Act and improvements had already been installed. The Commission's failure to state any actual dates for the alleged "unpermitted development" is glaring.

3. *No coastal development permit was applied for or obtained for this development.*

Response: Denied. The term "development" is inapplicable; therefore Ms. Wilson denies this finding. No permit was required as people have been living on the property since it was subdivided

and before the enactment of the Coastal Act. The Commission has provided no substantial evidence to the contrary.

4. *No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.*

Response: Denied. Exemption applies because the property has been in the existing use and residents have been living there in recreational vehicles since prior to the enactment of the Coastal Act.

5. *The unpermitted development is inconsistent with the Chapter 3 resource protection policies of the Coastal Act, including Sections 30230, 30231, 30233, 30240, and 30250(a).*

Response: Denied. As responded above, there is no development, and if any it needs no permit. But furthermore, the activity on the property is not inconsistent with the resource protection policies of the Act. There is plenty of access through Pacific Shores to any coastal resources. Indeed, the ingress to the subdivision provides a means for much of the illegal dumping which occurs there. It is the Commission's management of the Pacific Shores area that has been inconsistent with resource protection, killing the salmon runs and endangering species with manmade flooding practices.

Specifically, the cease-and-desist order has no relation to the cited codes: The order is utterly unrelated to PRC §30230; the Commission has presented no evidence that the property is within any specific designated areas and its own record states that the Pacific Shores land is more than 3,000 feet from any such designated areas. No specific, substantial evidence has been presented that Ms. Wilson jeopardizes water quality under PRC §30231; instead various generalities are mentioned. PRC §30233(c) is inapplicable. The pond on the property preexisted Ms. Wilson's ownership, Ms. Wilson has information that it existed prior to the enactment of the Coastal Act, and the Commission has provided no substantial evidence that it didn't pre-exist the Act. No dredging or diking has occurred on the property, and there is no existing estuary or wetland on the property. PRC §30240 is inapplicable; the Commission has offered no substantial evidence that the property is within an "environmentally sensitive habitat area," that 3,000 feet from Lake Earl is "adjacent" to

Regarding the portable toilet on the site, the Commission admits: "Commission staff has no information about whether it is being adequately maintained." Conversely then, the Commission staff has no information whether it is being *inadequately* maintained. It thus has no substantial evidence for any of the litany of sewage horrors it presents, at least as it specifically relates to Ms. Wilson's property.

The cease-and-desist order is most notably unsupported by substantial evidence as it applies to PRC §30250(a). The statute applies to "new" development. This is not new development. It has been there since 1963. The preference for such development where services exist is prevented by the Commission's own underground policy of preventing the provision of such services. The Commission has provided no substantial evidence that Ms. Wilson's property would impact "individually or cumulatively" on coastal resources. Indeed, it has never made a formal finding that the Pacific Shores subdivision would have such impact cumulatively.

- Response: Denied. It is the Commission's management of lakes Earl and Talawa that have killed the salmon runs. Ms. Wilson discharges nothing to the soil or water. She maintains the pre-existing pond on the property assuring that illegal dumping does not occur there. The Commission has presented no substantial evidence that Ms. Wilson is causing resource damages, continuing or otherwise. The Commission has only presented speculation that Ms. Wilson is discharging to the ground or water. Furthermore, nothing that the Commission has cited is evidence that even if Ms. Wilson *was* discharging water to the soil, that resource damages would occur. The Commission has provided no substantial evidence that surface water bodies or groundwater would be impacted.

7. *The unpermitted development is inconsistent with the Del Norte County Health and Welfare and Buildings and Construction Codes, including Sections 7.09.210, 7.09.240, 14.12.050, and 14.12.060.*

1        Response: Denied. Del Norte County, the entity empowered with the findings of any "inconsis-  
2        tencies" with its codes, has never cited Ms. Wilson for any violations. This is most likely due to the  
3        fact that the ordinances cited were all adopted after people began living in recreational vehicles on  
4        the property and would thus be retroactive, and unconstitutional, application of such ordinances.

5  
6        8. *The unpermitted development on the site constitutes a violation of the Coastal Act.*

7        Response: This is an unsubstantiated conclusion of law, not a finding of fact. It assumes the  
8        unsubstantiated findings above. Ms. Wilson denies the finding.

9  
10        **V. AFFIRMATIVE DEFENSES**

11        Janice Wilson asserts the following affirmative defenses against the Commission's proposed cease-  
12        and-desist order.

13  
14        U.S. CONSTITUTION, 14<sup>TH</sup> AMENDMENT, DUE PROCESS

15        Ms. Wilson's property rights are being taken without due process by Commission actions. Those  
16        actions include a concerted, ongoing policy of driving Pacific Shores resident, including Ms. Wilson,  
17        from their homes and property, as described below.

18  
19        U.S. CONSTITUTION, FIFTH AMENDMENT, TAKING

20        The acts of the Commission deprive Ms. Wilson and like-situated Pacific Shores residents of the  
21        use of their properties without due compensation and thereby constitutes a taking under the Fifth  
22        Amendment of the U.S. Constitution.

23        The cease-and-desist order is part of an ongoing scheme to deprive Pacific Shores residents of the  
24        rights and title to their properties through a program to intentionally flood their property; to preclude,  
25        prevent or delay the provision of basis health and safety services that would be provided to similarly  
26        situated citizens; and to obtain the property of Ms. Wilson and other Pacific Shores residents for  
27        ownership by various non-profit and conservancy entities functioning as proxies, agents or joint  
28        venturers with the Commission for that purpose.

1 There has never been a public purpose articulated by the Commission for its program of driving  
2 Pacific Shores residents off the land. However, the program is well-known and demonstrated.

3 Nor will driving inhabitants from their Pacific Shores property achieve any public purpose, indeed  
4 Commission practices or those carried out at the direction of the Commission, its individual members  
5 and the Commission's directors and staff, have contributed to killing the fish runs through lakes Earl and  
6 Talawa and endangering several wildlife species.

7 The Commission's program has deprived Ms. Wilson and Pacific Shores residents of basic health  
8 and safety services, even including 911 emergency response. Local government, at the direction of the  
9 Commission, its director and members, have ceased attempting to provide such services as safe roads,  
10 flood control, drainage, electricity, water and sewer.

11 The actions of the Commission constitute a taking of Ms. Wilson's property without any  
12 compensation.

13 Ms. Wilson and similarly-situated Pacific Shores residents have the same constitutional rights to  
14 health and safety services, accommodation, property use and liberty as similarly situated citizens. Those  
15 rights are not abrogated by their location in a California coastal zone.

16 The director and commissioners of the California Coastal Commission, in their individual  
17 capacities, have been engaged in and currently are engaged in a coordinated scheme to deprive Ms.  
18 Wilson and other Pacific Shores residents of their property by actions designed to force them to sell at  
19 reduced prices or simply to leave, including actions such as unwarranted cease-and-desist orders;  
20 intentional flooding; blocking, preventing or discouraging provision of basic health and safety services  
21 and encouraging others to take such actions.

22 Ms. Wilson and other Pacific Shores residents have been deprived of their liberty and property  
23 rights through those actions of the Commission and its director and commissioners in an individual  
24 capacity, in that Ms. Wilson and other Pacific Shores residents cannot live on land they lawfully  
25 purchased, or live on it with adequate health and safety, emergency response, and basic services such as  
26 water and electricity. Furthermore, their health is endangered indirectly through flooding and other  
27 practices intended by the Commission and its director and commissioners to drive Pacific Shores back to  
28 its natural state.

1 The director and commissioners knew or reasonably should have known that their actions would  
2 deprive Ms. Wilson and similarly situated Pacific Shores residents of their constitutional property rights,  
3 including rights of due process, equal protection and freedom from taking under the U.S. Constitution.  
4

5 CALIFORNIA CONSTITUTION, EQUAL PROTECTION AND DUE PROCESS, ARTICLE I, §§ 7 AND 15

6 The Commission's actions violate the California Constitution's protections of equal protection and  
7 due process, Art. I, §§ 7 and 15, in that they have deprived Ms. Wilson and other Pacific Shores resi-  
8 dents of their liberty and property rights in that Ms. Wilson and other Pacific Shores residents cannot  
9 live on land they lawfully purchased, or live on it with adequate health and safety, emergency response,  
10 and basic services such as water and electricity. Furthermore, their health is endangered indirectly  
11 through flooding and other practices intended by the director and commissioners to drive Pacific Shores  
12 back to its natural state.

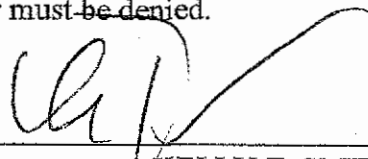
13  
14 EXEMPTION FROM PERMITTING

15 Ms. Wilson submits that she is exempt from permitting under the Coastal Act and has the  
16 procedural right to assert such exemption prior to the proposed enforcement.  
17

18 **V. CONCLUSION**

19 The cease and desist order is an illegal effort to deprive Ms. Wilson of her property without  
20 compensation and in violation of fundamental constitutional rights. The basis for doing so is  
21 unsupported by substantial evidence. The order must be denied.  
22

23 DATE: November 13, 2006

24   
25 \_\_\_\_\_  
26 KELLY T. SMITH  
27 Attorney for Respondent  
28 JANICE WILSON

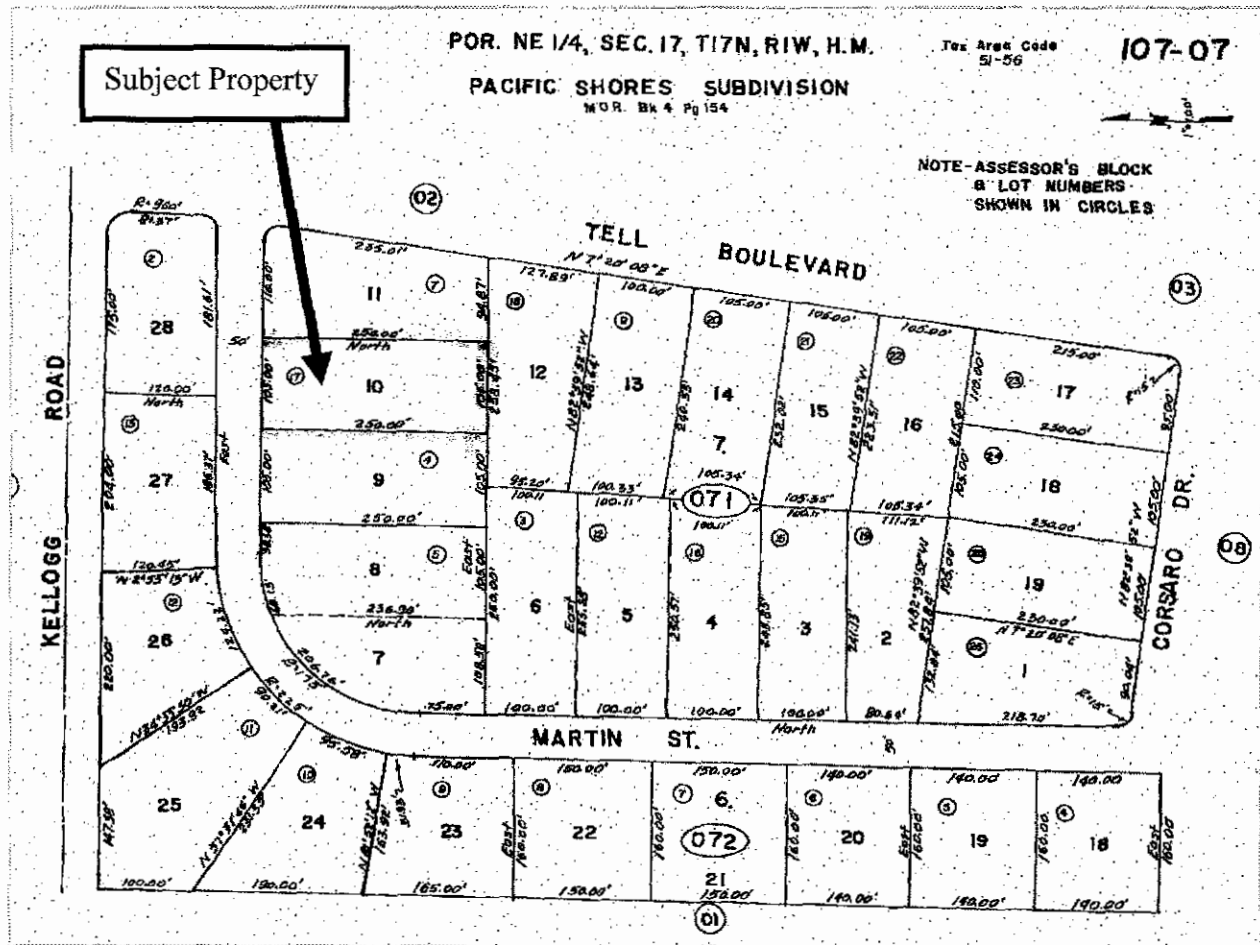
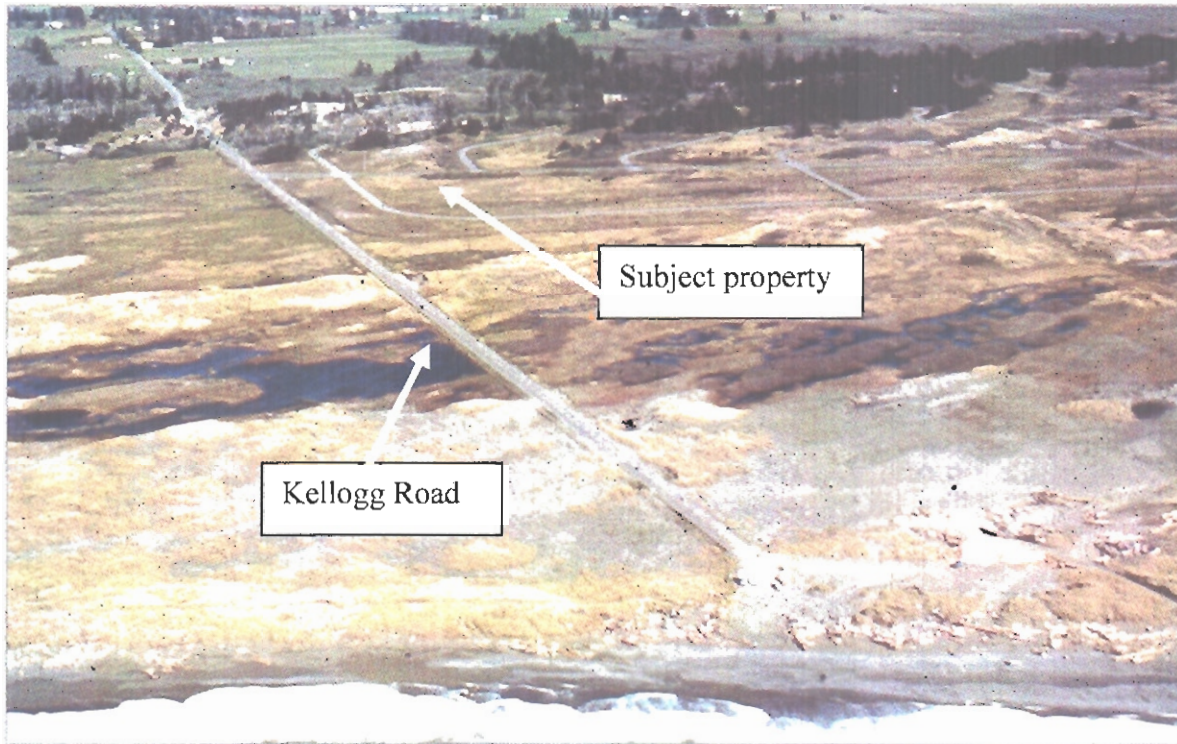


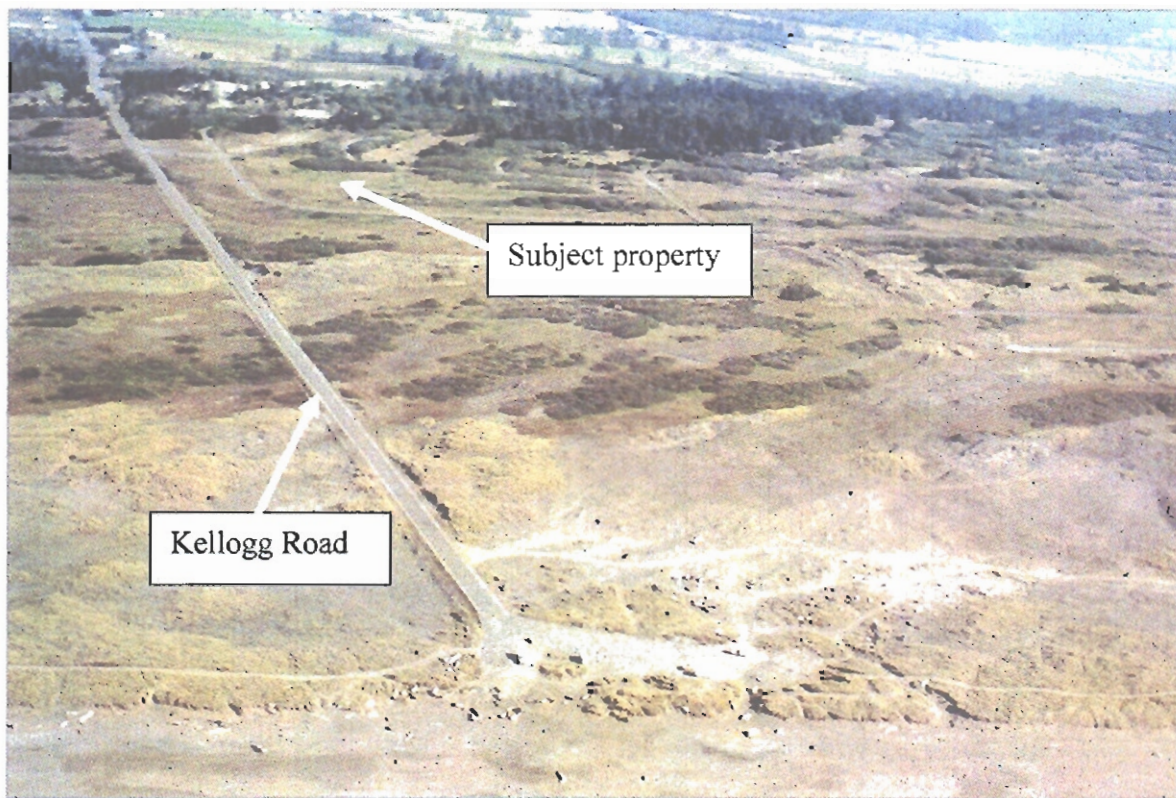
Exhibit 2a: Parcel map of subject property, APN 107-071-17.





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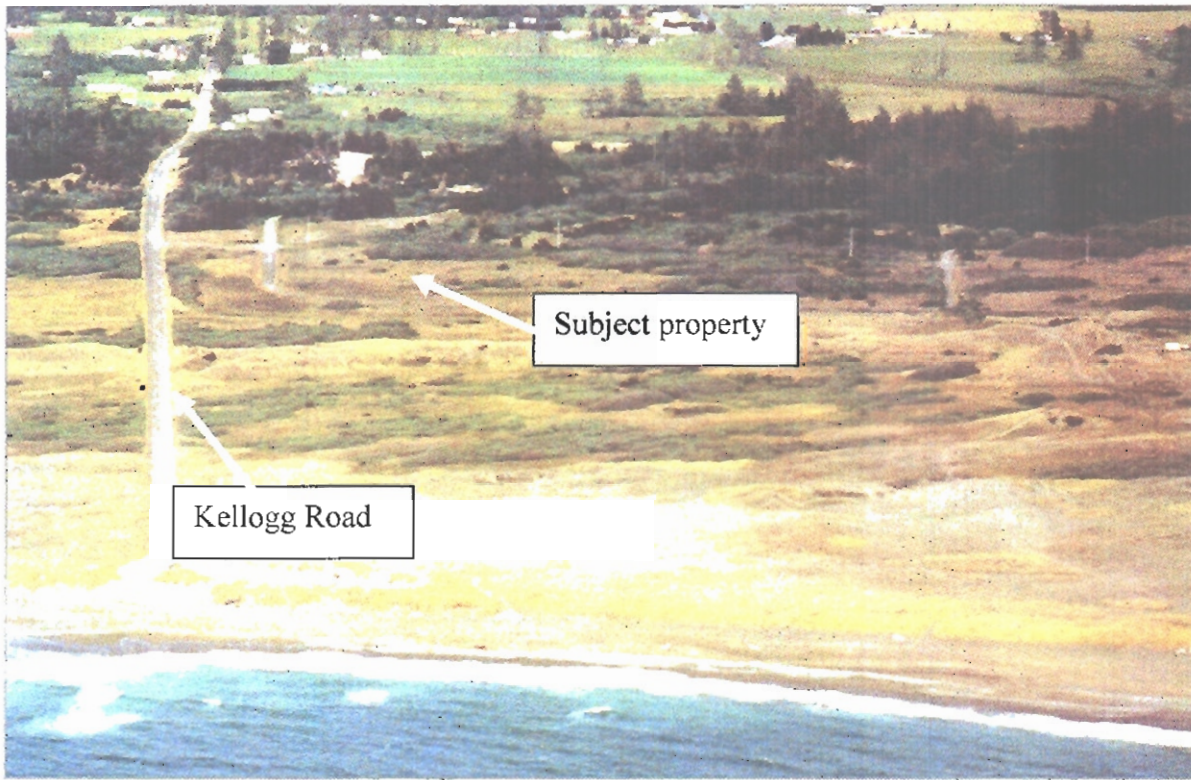
**Exhibit 2b:** 1972 aerial photograph of subject property.



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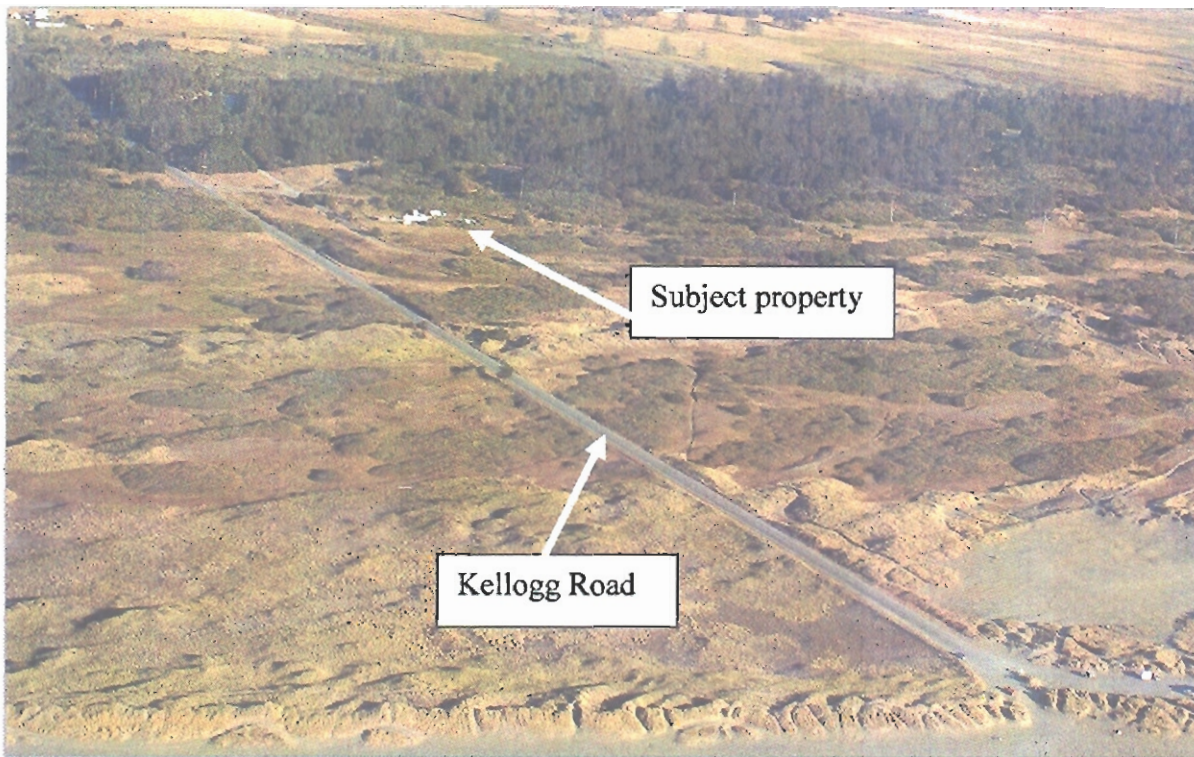
**Exhibit 2c:** 1979 aerial photograph of subject property.





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**Exhibit 2d:** 1987 aerial photograph of subject property.



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**Exhibit 2e:** 2002 aerial photograph of subject property.